

1
2 **DECLARATION OF JAN S. RAYMOND**

3 I, Jan Raymond, declare:

4 1. I am an attorney licensed to practice by the California State Bar, State Bar number
5 88703, and admitted to practice in the United States Federal Court for the Eastern District of
6 California. My business is researching the history and intent of legislative and regulatory
7 enactments and adoptions; I have over 30 years experience in research and analysis of
8 legislative and regulatory intent. In cooperation with persons working under my supervision, I
9 undertook to research the following project. All use of the word "project" in this declaration
10 refers to legislative research addressed to this focus:
11

12 **Water Code Section 7075**

As added by Chapter 368, Statutes of 1943.

13 **Water Code Section 1210-1212**

As added by Chapter 933, Statutes of 1980.

As amended by Chapter 315, Statutes of 2001.

14 **Water Code Section 1485**

As added by Chapter 2143, Statutes of 1961.

As amended by Chapter 284, Statutes of 1967.

15 **Water Code Section 1486**

As added by Chapter 212, Statutes of 2011.

As amended by Chapter 162, Statutes of 2012.

16
17
18 2. At all times, all persons working on this project operated under instructions to locate
19 all documents available pertinent to this adoption. This research was compiled in the days
20 immediately prior to the date of this declaration, and reflects all the documents, and sources,
21 available during that time pertinent to this project.

22 3. The documents listed are the substantive documents collected pertinent to the history
23 of this project. The term "substantive documents" as used in the previous sentence refers to
24 those documents relevant to the scope of the project. Some documents regarding the proposal
25 related to this project may not be forwarded in this report. Documents not forwarded may
26 include fiscal analyses addressing the budgetary impact of legislation, documents addressing
27 other portions of the proposal not directly relevant to the project, documents addressing simple

1 support for or opposition to the proposal, or other documents unlikely to be helpful in
2 understanding the substantive purpose of the proposal. The complete collection of documents
3 is organized in generally chronological order and sequentially numbered.

4 4. The California Legislature historically has not regularly recorded and/or transcribed
5 committee or floor proceedings. But in recent decades, individual committees have sporadically
6 recorded, and in some cases transcribed, committee proceedings. In addition, a select few
7 committee, and many floor, proceedings since the early 1990's are available on videotape.
8 Beginning in the 2003-2004 session, an effort has been made to record almost all legislative
9 proceedings in either audio or video format, although the effort is informal rather than mandated
10 by detailed legislative rules and procedures. The recordings available in all media are uniformly
11 difficult and time-consuming to access, rarely transcribed, and rarely contain substantive
12 discussion that goes beyond the most simple and basic assertions about the legislation in
13 question. In general, the documentary history contains much more detailed discussion of the
14 intent and purpose of the bill under consideration. Therefore, this report was compiled using
15 documentary sources only.

16 5. Individual documents may appear in multiple locations or files. We endeavor to
17 obtain only one copy of the document. Where it is clearly important, we endeavor to note each
18 source of the document in this declaration. But some documents for which we cite a single
19 source may in fact have been found in multiple locations. Where this raises an issue important
20 in individual circumstances, all source locations of particular documents can be identified upon
21 request.

22 6. All documents listed are included with this declaration, except as otherwise noted in
23 this declaration. All documents included are true and correct copies of the original documents.
24 Unless otherwise noted in this declaration, all documents were obtained at one of the following
25 sources: legislative offices at the State Capitol, the California State Library, the California State
26 Archives, or libraries at the University of California at Davis. References to "bill file" as used in
27

1 this declaration refer to files maintained regarding the legislation that is the subject of the
2 document collection. Some documents copied from microfilm originals may be of poor quality;
3 all copies included with this report are the best available copies.

4 7. In this list of documents the abbreviation SFA refers to the Office of Senate Floor
5 Analyses, ARC refers to the Assembly Republican Caucus, SDC refers to the Senate
6 Democratic Caucus, SRC refers to the Senate Republican Caucus. References to the
7 legislative counsel web site refer to www.leginfo.ca.gov/. The following listed documents that
8 accompany this declaration are true and correct copies:

9 **1872 Former Civil Code Section 1413**

- 10 Predecessor case law regarding former California Civil Code Section 1413, enacted
11 1872, dated between 1808 to 1867, from the collection at the California State Law
Library. Page 1
12 1871 Rejected Civil Code, from the collection at the California State Law Library. Page 83
13 1872 Annotated Civil Code excerpt regarding Section 1413, from the collection at the
14 California State Law Library. Page 193

15 **1943 Chapter 368**

- 16 Excerpt regarding Senate Bill 945 (Carter) from the Senate Final History, 1943
17 Regular Session. Page 197
18 Chapter 368, Statutes of 1943. Page 199
19 Excerpt regarding Senate Bill 945 from the Legislative Digest, 1943 Regular Session. Page 209
20 Excerpt of the 1943 Report of the California Code Commission, from the collection at
21 the California State Law Library. Page 211
22 Excerpt of the 1945 Report of the California Code Commission, from the collection at
the California State Law Library. Page 217
23 Excerpt of the 1947 Report of the California Code Commission, from the collection at
24 the California State Law Library. Page 223

25 **1980 Chapter 933**

- 26 Excerpt regarding Assembly Bill 1147 (Filante) from the Assembly Final History, 1979-
27 80 Regular Session. Page 233

1	Excerpt of Assembly Bill 1147 as introduced March 22, 1979 regarding California Water Code Sections 1210-1212.	Page 235
2	The California Law of Water Rights, Letters and Documents regarding AB 1147, as	
3	introduced, dated between 1956 and April 18, 1970, from the Author's bill file of	
4	Assembly Member William Filante, twenty-six pages.	Page 241
5	Letters regarding AB 1147, as introduced, dated between April 23, 1979 and April 24,	
6	1979, from the bill file of the Assembly Committee on Water, Parks and Wildlife, five	
7	pages.	Page 267
8	Letter regarding AB 1147, as introduced, dated April 24, 1979, from the Author's bill	
9	file of Assembly Member William Filante, one page.	Page 272
10	Assembly Committee on Water, Parks and Wildlife Analysis regarding AB 1147, as	
11	introduced, for the hearing dated April 25, 1979, from the bill file of the Assembly	
12	Committee on Water, Parks and Wildlife, six pages.	Page 273
13	Letters regarding AB 1147, as introduced, dated April 25, 1979, from the Author's bill	
14	file of Assembly Member William Filante, three pages.	Page 279
15	Excerpt of Assembly Bill 1147 as amended in Assembly May 7, 1979 regarding	
16	California Water Code Sections 1210-1212.	Page 283
17	Letter regarding AB 1147, as amended May 7, 1979, dated May 24, 1979, from the	
18	Author's bill file of Assembly Member William Filante, one page.	Page 290
19	Excerpt of Assembly Bill 1147 as amended in Assembly May 25, 1979 regarding	
20	California Water Code Sections 1210-1212.	Page 291
21	Assembly Ways and Means Analysis regarding AB 1147, as amended May 25, 1979,	
22	from the bill file of the Assembly Committee on Ways and Means, one page.	Page 299
23	Letter regarding AB 1147, as amended May 25, 1979, dated May 29, 1979, from the	
24	Author's bill file of Assembly Member William Filante, one page.	Page 300
25	Letter regarding AB 1147, as amended May 25, 1979, dated June 11, 1979, from the	
26	bill file of the Assembly Committee on Water, Parks and Wildlife, one page.	Page 301
27	Legislative Analyst regarding AB 1147, as amended May 25, 1979, dated June 13,	
28	1979, from the bill file of the Assembly Committee on Ways and Means, four pages.	Page 303
29	Assembly Third Reading regarding AB 1147, as amended May 25, 1979, from the	
30	Author's bill file of Assembly Member William Filante, two pages.	Page 307
31	Excerpt of Assembly Bill 1147 as amended in Senate July 18, 1979 regarding	
32	California Water Code Sections 1210-1212.	Page 309
33	Legislative analyst regarding AB 1147, as amended July 18, 1979, dated June 27,	
34	1979, from the Author's bill file of Assembly Member William Filante, four pages.	Page 317

1	Letters regarding AB 1147, as amended July 18, 1979, dated between August 13, 1979 and December 26, 1979, from the Author's bill file of Assembly Member William Filante, six pages.	Page 321
2		
3	Senate Committee on Agriculture and Water Resources Analysis regarding AB 1147, as amended July 18, 1979, dated February 5, 1980, three pages.	Page 327
4		
5	Excerpt of Assembly Bill 1147 as amended in Senate February 11, 1980 regarding California Water Code Sections 1210-1212.	Page 331
6		
7	Letters regarding AB 1147, as amended February 11, 1980, dated between March 3, 1980 and June 18, 1980, from the Author's bill file of Assembly Member William Filante, three pages.	Page 339
8		
9	Excerpt of Assembly Bill 1147 as amended in Senate June 19, 1980 regarding California Water Code Sections 1210-1212.	Page 343
10		
11	Letter regarding AB 1147, as amended June 19, 1980, dated June 27, 1980, from the Author's bill file of Assembly Member William Filante, two pages.	Page 350
12		
13	SDC Analysis regarding AB 1147, as amended June 19, 1980, dated July 1, 1980, from the bill file of the SDC, two pages.	Page 353
14		
15	SRC Analysis regarding AB 1147, as amended June 19, 1980, dated July 1, 1980, from the bill file of the SRC, three pages.	Page 355
16		
17	News Letter regarding AB 1147, as amended June 19, 1980, dated August 18, 1980, from the Author's bill file of Assembly Member William Filante, one page.	Page 358
18		
19	Letters and Enrolled Bill Reports regarding AB 1147, as enrolled, dated between August 21, 1980 and September 3, 1980, from the Chaptered bill file of Governor Edmund G. Brown Jr., thirteen pages.	Page 359
20		
21	Enrolled Bill Report regarding AB 1147, as enrolled, dated September 11, 1980, from the Author's bill file of Assembly Member William Filante, two pages.	Page 372
22		
23	News Letter regarding AB 1147, as Chaptered, dated September 19, 1980, from the Author's bill file of Assembly Member William Filante, one page.	Page 374
24		
25	Excerpt of Chapter 1147, Statutes of 1980 regarding California Water Code Sections 1210-1212.	Page 375
26		
27	Excerpt regarding Chapter 1147 from the Summary Digest, 1979-1980 Regular Session.	Page 381
	Excerpt regarding Assembly Bill 1147 from the Index to Journal of the Assembly, 1979-1980 Regular Session.	Page 385
	Excerpt regarding Assembly Bill 1147 from the Journal of the Senate, 1979-1980 Regular Session.	Page 387

2001 Chapter 315

1		
2	Complete Bill History regarding Assembly Bill 946 (Kelley) from the legislative counsel web site, two pages.	Page 389
3	Assembly Bill 946 as introduced dated February 23, 2001.	Page 391
4	Background Document regarding AB 946, as introduced, dated June 15, 1987, from the bill file of the Senate Committee on Judiciary, eleven pages.	Page 402
5		
6	Document and Letter regarding AB 946, as introduced, dated March 19, 2001, from the bill file of the Senate Committee on Agriculture and Water Resources, three pages.	Page 413
7		
8	Letter regarding AB 946, as introduced, dated March 23, 2001, from the bill file of the ARC, two pages.	Page 416
9		
10	Assembly Republican Bill Analysis regarding AB 946, as introduced, dated March 31, 2001, from the Author's bill file of Assembly Member David Kelley, three pages.	Page 419
11		
12	Assembly Committee on Water, Parks and Wildlife Background Information Request and Attachments regarding AB 946, as introduced, from the bill file of the Assembly Committee on Water, Parks and Wildlife, four pages.	Page 422
13		
14	Assembly Committee on Water, Parks and Wildlife Analysis regarding AB 946, as introduced, for the hearing dated April 3, 2001, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 427
15		
16	Committee Statement regarding AB 946, as introduced, dated April 3, 2001, from the Author's bill file of Assembly Member David Kelley, one page.	Page 429
17		
18	Email regarding AB 946, as introduced, dated April 10, 2001, from the bill file of the ARC, four pages.	Page 430
19		
20	Assembly Republican Bill Analysis regarding AB 946, as introduced, dated April 12, 2001, from the bill file of the ARC, three pages.	Page 435
21		
22	Letter regarding AB 946, as introduced, dated April 13, 2001, from the bill file of the Senate Committee on Agriculture and Water Resources, three pages.	Page 438
23		
24	Assembly Bill 946 as amended in Assembly April 16, 2001.	Page 441
25		
26	Assembly Committee on Judiciary Background Information Worksheet and Attachments regarding AB 946, as amended April 16, 2001, from the bill file of the ARC, four pages.	Page 452
27		
	Assembly Committee on Judiciary Analysis regarding AB 946, as amended April 16, 2001, for the hearing dated April 17, 2001, from the Author's bill file of Assembly Member David Kelley, four pages.	Page 457

1	Assembly Committee on Water, Parks and Wildlife Analysis regarding AB 949, as amended April 18, 2001, for the hearing dated April 24, 2001, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 461
2		
3	Assembly Bill 946 as amended in Assembly April 25, 2001.	Page 463
4	Assembly Third Reading regarding AB 946, as amended April 25, 2001, from the bill file of the SFA, two pages.	Page 475
5		
6	Department of Finance Analysis regarding AB 946, as amended April 25, 2001, dated May 11, 2001, from the bill file of the SFA, one page.	Page 477
7	Assembly Committee on Appropriations Analysis regarding AB 946, as amended April 25, 2001, for the hearing dated May 16, 2001, from the bill file of the Assembly Committee on Appropriations, one page.	Page 479
8		
9	Committee Statement regarding AB 946, as amended April 25, 2001, dated May 16, 2001, from the Author's bill file of Assembly Member David Kelley, one page.	Page 480
10		
11	Assembly Republican Bill Analysis regarding AB 946, as amended April 25, 2001, dated May 22, 2001, from the bill file of the Senate Republican Fiscal Office, three pages.	Page 481
12		
13	Assembly Floor Statement regarding AB 946, as amended April 25, 2001, dated May 24, 2001, from the Author's bill file of Assembly Member David Kelley, one page.	Page 484
14		
15	Letter regarding AB 946, as amended April 25, 2001, dated May 29, 2001, from the bill file of the Senate Committee on Agriculture and Water Resources, two pages.	Page 485
16	Senate Committee on Environmental Quality Background Information Request regarding AB 946, as amended April 25, 2001, from the Author's bill file of Assembly Member David Kelley, one page.	Page 487
17		
18	Letter regarding AB 946, as amended April 25, 2001, dated June 25, 2001, from the bill file of the SRC, two pages.	Page 488
19		
20	Letter regarding AB 946, as amended April 25, 2001, dated June 29, 2001, from the bill file of the Senate Committee on Agriculture and Water Resources, two pages.	Page 490
21	Assembly Bill 946 as amended in Senate July 2, 2001.	Page 493
22		
23	Senate Committee on Agriculture and Water Resources background Information Request and Attachments regarding AB 946, as amended July 2, 2001, from the bill file of the Senate Committee on Agriculture and Water Resources, four pages.	Page 505
24		
25	Analysis regarding AB 946, as amended July 2, 2001, from the bill file of the Senate Republican Fiscal Office, four pages.	Page 509
26	Committee Statement regarding AB 946, as amended July 2, 2001, dated July 3, 2001, from the Author's bill file of Assembly Member David Kelley, one page.	Page 513
27		

1	Senate Committee on Agriculture and Water Resources Analysis regarding AB 946, as amended July 2, 2001, for the hearing dated July 3, 2001, from the bill file of the Senate Committee on Agriculture and Water Resources, three pages.	Page 515
2		
3	Email regarding AB 946, as amended July 2, 2001, dated July 11, 2001, from the bill file of the Senate Committee on Judiciary, one page.	Page 518
4		
5	Letter regarding AB 946, as amended July 2, 2001, dated July 16, 2001, from the Author's bill file of Assembly Member David Kelley, two pages.	Page 519
6		
7	Analysis regarding AB 946, as amended July 2, 2001, dated July 17, 2001, from the Author's bill file of Assembly Member David Kelley, four pages.	Page 521
8		
9	Senate Committee on Judiciary Analysis regarding AB 946, as amended July 2, 2001, for the hearing dated July 17, 2001, from the Author's bill file of Assembly Member David Kelley, four pages.	Page 525
10		
11	Analysis regarding AB 946, as amended July 2, 2001, dated August 8, 2001, from the bill file of the SFA, two pages.	Page 529
12		
13	Assembly Bill 946 as amended in Senate August 20, 2001.	Page 531
14		
15	Assembly Third Reading regarding AB 946, as amended August 20, 2001, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 541
16		
17	Concurrence in Senate Amendments regarding AB 946, as amended August 20, 2001, from the bill file of the SFA, one page.	Page 543
18		
19	SFA Third Reading regarding AB 946, as amended August 20, 2001, from the bill file of the SFA, four pages.	Page 545
20		
21	Senate Floor Statement regarding AB 946, as amended August 20, 2001, from the Author's bill file of Assembly Member David Kelley, one page.	Page 549
22		
23	Assembly Republican Bill Analysis regarding AB 946, as amended August 20, 2001, dated August 30, 2001, from the Chaptered bill file of Governor Gray Davis, two pages.	Page 551
24		
25	Letter regarding AB 946, as amended August 20, 2001, dated September 4, 2001, from the Author's bill file of Assembly Member David Kelley, one page.	Page 553
26		
27	Enrolled Bill Memorandum and Enrolled Bill Reports regarding AB 946, as amended August 20, 2001, dated between September 5, 2001 and September 8, 2001, from the Chaptered bill file of Governor Gray Davis, eight pages.	Page 555
	Letter regarding AB 946, as enrolled, dated September 18, 2001, from the Chaptered bill file of Governor Gray Davis, one page.	Page 563
	Chapter 315, Statutes of 2001.	Page 565
	Excerpt regarding Chapter 315 from the Summary Digest, 2001-02 Regular Session.	Page 573

1	Excerpt regarding Assembly Bill 946 from the Index to Journal of the Assembly, 2001-	
2	02 Regular Session.	Page 577
3		
	<u>1961 Chapter 2143</u>	
4	Excerpt regarding Senate Bill 1346 (Short) from the Senate Final History, 1961	
5	Regular Session.	Page 579
6	Senate Bill 1346 as introduced April 19, 1961.	Page 581
7	Senate Bill 1346 as amended in Senate May 10, 1961.	Page 583
8	Senate Bill 1346 as amended in Senate May 22, 1961.	Page 585
9	Senate Bill 1346 as amended in Senate May 25, 1961.	Page 587
10	Senate Bill 1346 as amended in Assembly June 7, 1961.	Page 589
11	Letters and Bill Memorandum regarding SB 1346, as enrolled, dated between June	
12	22, 1961 and July 18, 1961, from the Chaptered bill file of Governor Edmund G.	
	Brown, nine pages.	Page 591
13	Chapter 2143, Statutes of 1961.	Page 601
14	Excerpt regarding Chapter 2143 from the Summary Digest, 1961 Regular Session.	Page 605
15	Excerpt regarding Senate Bill 1346 from the Journal of the Senate, 1961 Regular	
16	Session.	Page 607
17	Excerpt regarding Senate Bill 1346 from the Index to Journal of the Assembly, 1961	
18	Regular Session.	Page 609
19		
	<u>1967 Chapter 284</u>	
20	Excerpt regarding Assembly Bill 163 (Porter) from the Assembly Final History, 1967	
	Regular Session.	Page 611
21	Excerpt of Assembly Bill 163 as introduced January 18, 1967 regarding California	
22	Water Code Sections 1485.	Page 613
23	Excerpt of Assembly Bill 163 as amended in Assembly March 31, 1967 regarding	
	California Water Code Sections 1485.	Page 619
24	Excerpt of Assembly Bill 163 as amended in Senate April 26, 1967 regarding	
25	California Water Code Sections 1485.	Page 623
26	Excerpt of Assembly Bill 163 as amended in Senate May 10, 1967 regarding	
27	California Water Code Sections 1485.	Page 629

1	Letters, Documents and Memorandum regarding AB 163, as amended May 10, 1967, dated between May 25, 1967 and May 29, 1967, from the Chaptered bill file of Governor Ronald Reagan, eight pages.	Page 634
2		
3	Letters, Memorandum and Press Release regarding AB 163, as enrolled, dated between June 2, 1967 and June 6, 1967, from the Chaptered bill file of Governor Ronald Reagan, seven pages.	Page 642
4		
5	Chapter 284, Statutes of 1967.	Page 649
6	Excerpt regarding Chapter 284 from the Summary Digest, 1967 Regular Session.	Page 669
7	Excerpt regarding Assembly Bill 163 from the Indexes to Journal of the Assembly, 1967 Regular Session.	Page 671
8		
9	Excerpt regarding Assembly Bill 163 from the Journal of the Senate, 1967 Regular Session.	Page 673
10		
	<u>2011 Chapter 212</u>	
11	Complete Bill History regarding Assembly Bill 134 (Dickinson) from the legislative counsel web site, one page.	Page 675
12		
13	Assembly Bill 134 as introduced January 12, 2011.	Page 677
14	State Water Control Board Document regarding AB 134, as introduced, from the bill file of the Senate Committee on Natural Resources and Water, twenty-six pages.	Page 681
15		
16	Documents regarding AB 134, as Introduced, dated October 21, 2008, from the bill file of the Assembly Committee on Water, Parks and Wildlife, eighteen pages.	Page 707
17	Documents regarding AB 134, as introduced, dated between October 8, 2010 and November 10, 2010, from the bill file of the Senate Committee on Natural Resources and Water, thirty-two pages.	Page 725
18		
19	Letter regarding AB 134, as introduced, dated December 10, 2010, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 757
20		
21	Article regarding AB 134, as introduced, from the bill file of the ARC, four pages.	Page 759
22	Letters regarding AB 134, as introduced, dated between February 11, 2011 and February 15, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 763
23		
24	Letter regarding AB 134, as introduced, dated February 21, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 765
25		
26	Letters regarding AB 134, as introduced, dated between February 25, 2011 and March 14, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, fifteen pages.	Page 766
27		

1	Letter regarding AB 134, as introduced, dated March 15, 2011, from the bill file of the ARC, one page.	Page 781
2	Letters regarding AB 134, as introduced, dated between March 16, 2011 and March 17, 2011, from the bill file of the ARC, three pages.	Page 782
4	Document and Letter regarding AB 134, as introduced, dated between March 18, 2011 and March 21, 2011, from the bill file of the Senate Committee on Natural Resources and Water, five pages.	Page 785
6	Letters regarding AB 134, as introduced, dated March 21, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 790
8	Letter regarding AB 134, as introduced, dated March 22, 2011, from the bill file of the ARC, six pages.	Page 792
9	Assembly Bill 134 as amended in Assembly March 23, 2011.	Page 799
10	Letter regarding AB 134, as amended March 23, 2011, dated March 23, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, one page.	Page 803
12	Fact Sheet regarding AB 134, as amended March 23, 2011, dated March 24, 2011, from the bill file of the ARC, two pages.	Page 804
14	Letters regarding AB 134, as amended March 23, 2011, dated between March 24, 2011 and March 28, 2011, from the bill file of the Senate Committee on Natural Resources and Water, two pages.	Page 806
16	Letter regarding AB 134, as amended March 23, 2011, dated March 28, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 808
18	Letter regarding AB 134, as amended March 23, 2011, dated March 29, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 810
19	Letter regarding AB 134, as amended March 23, 2011, dated March 30, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, one page.	Page 811
21	Letter regarding AB 134, as amended March 23, 2011, dated March 30, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 812
22	Letter regarding AB 134, as amended March 23, 3013, dated March 30, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, one page.	Page 137
24	Letter regarding AB 134, as amended March 23, 2011, dated March 31, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 814
26	Letters regarding AB 134, as amended March 23, 3013, dated between March 30, 2011 and April 1, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, five pages.	Page 815
27		

1	Letter regarding AB 134, as amended March 23, 2011, dated April 4, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 820
2	Assembly Committee on Water, Parks and Wildlife Analysis regarding AB 134, as amended March 23, 2011, for the hearing dated April 5, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, four pages.	Page 821
3		
4	Letters regarding AB 134, as amended March 23, 2011, dated between April 6, 2011 and April 11, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, three pages.	Page 825
5		
6	Assembly Bill 134 as amended in Assembly April 15, 2011.	Page 829
7		
8	Fact Sheet regarding AB 134, as amended April 15, 2011, dated April 15, 2011, from the bill file of the Senate Committee on Natural Resources and Water, two pages.	Page 832
9		
10	Letter regarding AB 134, as amended April 15, 2011, dated April 15, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 834
11		
12	Assembly Third Reading regarding AB 134, as amended April 15, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 837
13		
14	Letter and Email regarding AB 134, as amended April 15, 2011, dated between April 18, 2011 and April 19, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, two pages.	Page 839
15		
16	Letter regarding AB 134, as amended April 15, 2011, dated April 19, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 841
17		
18	Letters regarding AB 134, as amended April 15, 2011, dated April 19, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, four pages.	Page 842
19		
20	Letter regarding AB 134, as amended April 15, 2011, dated April 20, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 846
21		
22	Letter regarding AB 134, as amended April 15, 2011, dated April 20, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, one page.	Page 847
23		
24	Letter regarding AB 134, as amended April 15, 2011, dated April 21, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 848
25		
26	Letter regarding AB 134, as amended April 15, 2011, dated April 21, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, one page.	Page 849
27		
	Letters regarding AB 134, as amended April 15, 2011, dated April 25, 2011, from the bill file of the Senate Committee on Natural Resources and Water, four pages.	Page 850
	Assembly Committee on Water, Parks and Wildlife Analysis regarding AB 134, as amended April 15, 2011, for the hearing dated April 26, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, three pages.	Page 855

1	Letter and Attachment regarding AB 134, as amended April 15, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, three pages.	Page 858
2	Letter regarding AB 134, as amended April 15, 2011, dated April 26, 2011, from the bill file of the Senate Committee on Natural Resources and Water, one page.	Page 861
3		
4	Document regarding AB 134, as amended April 15, 2011, dated April 26, 2011, from the bill file of the Assembly Committee on Water, Parks and Wildlife, one page.	Page 862
5		
6	Letters regarding AB 134, as amended April 15, 2011, dated between April 29, 2011 and May 10, 2011, from the bill file of the Senate Committee on Natural Resources and Water, two pages.	Page 863
7		
8	Assembly Committee on Appropriations Analysis regarding AB 134, as amended April 15, 2011, for the hearing dated May 11, 2011, from the bill file of the Assembly Committee on Appropriations, one page.	Page 865
9		
10	Letters regarding AB 134, as amended April 15, 2011, dated between May 11, 2011 and June 27, 2011, from the bill file of the Senate Committee on Natural Resources and Water, twenty-four pages.	Page 866
11		
12	Senate Committee on Natural Resources and Water Background Information Request regarding AB 134, as amended April 15, 2011, from the bill file of the Senate Committee on Natural Resources and Water, four pages.	Page 890
13		
14	Senate Committee on Natural Resources and Water Analysis regarding AB 134, as amended April 15, 2011, for the hearing dated June 28, 2011, from the bill file of the Senate Committee on Natural Resources and Water, three pages.	Page 895
15		
16	Letter regarding AB 134, as amended April 15, 2011, dated June 29, 2011, from the bill file of the Senate Committee on Appropriations, one page.	Page 898
17		
18	SFA Third Reading regarding AB 134, as amended April 15, 2011, from the bill file of the SFA, four pages.	Page 899
19		
20	Chapter 212, Statutes of 2011.	Page 903
21		
22	<u>2012 Chapter 162</u>	
23	Complete Bill History regarding Senate Bill 1171 (Harman) from the legislative counsel web site, one page.	Page 905
24		
25	Excerpt of Senate Bill 1171 as introduced February 22, 2012 regarding California Water Code Sections 1486.	Page 907
26		
27	Senate Committee on Judiciary Background Information Request regarding SB 1171, as introduced, from the bill file of the Senate Committee on Judiciary, three pages.	Page 913
	Senate Committee on Judiciary Analysis regarding SB 1171, as introduced, for the hearing dated May 1, 2012, from the bill file of the Senate Committee on Judiciary, two pages.	Page 917

1	Excerpt of Senate Bill 1171 as amended in Assembly May 21, 2012 regarding California Water Code Sections 1486.	Page 919
2	Analysis regarding SB 1171, as amended May 21, 2012, dated June 5, 2012, from the bill file of the Assembly Committee on Judiciary, one page.	Page 925
3		
4	Assembly Republican Bill Analysis regarding SB 1171, as amended May 21, 2012, dated June 11, 2012, from the bill file of the Assembly Committee on Judiciary, one page.	Page 927
5		
6	Assembly Committee on Judiciary Mandatory Information Worksheet regarding SB 1171, as amended May 21, 2012, from the bill file of the Assembly Committee on Judiciary, three pages.	Page 928
7		
8	Assembly Committee on Judiciary Analysis regarding SB 1171, as amended May 21, 2012, for the hearing dated June 26, 2012, from the bill file of the Assembly Committee on Judiciary, one page.	Page 931
9		
10	SFA Unfinished Business regarding SB 1171, as amended May 21, 2012, from the bill file of the SFA, two pages.	Page 933
11		
12	Excerpt of Chapter 162, Statutes of 2012 regarding California Water Code Section 1486.	Page 935
13		
14	Excerpt regarding California Water Code Section 1486 from the Legislation Necessary to Maintain the Codes, dated November 9, 2012, from the collection at the California State Law Library.	Page 939
15		

This collection ends with page 946

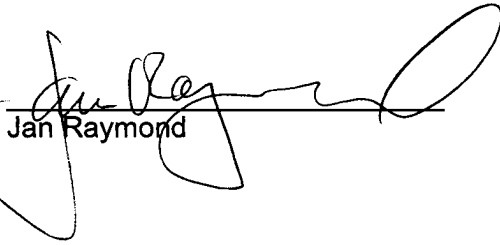
//////////////////////////////////// text continues on next page //////////////////////////////////////

17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I declare under penalty of perjury the foregoing is true and correct.

Executed at Sacramento, California, January 14, 2016.


Jan Raymond

REPORTS
OF
CASES ARGUED AND DETERMINED

1847
IN THE
High Court of Chancery,

FROM THE YEAR M DCC LXXXIX TO M DCCC XVII.

WITH A DIGESTED INDEX.

BY FRANCIS VESEY, JUN. ESQ.
OF LINCOLN'S INN, BARRISTER AT LAW.

In Twenty Volumes.

VOL. XV.

M DCCC VIII.... M DCCC IX. XLVIII AND XLIX GEO. III.

FROM THE LAST LONDON EDITION, WITH THE NOTES OF FRANCIS VESEY, JUN. ESQ.
AND THE EXTENSIVE ANNOTATIONS OF JOHN E. HOVENDEN, ESQ.
OF GRAY'S INN, BARRISTER AT LAW.

THE WHOLE EDITED,

WITH NOTES AND REFERENCES TO AMERICAN LAW,

AND SUBSEQUENT ENGLISH DECISIONS,

BY

CHARLES SUMNER, ESQ.

Omne jus, quod est certum, aut scripto, aut moribus constat. Dubium æquitatis regula examinandum est. Quæ scripta sunt, aut posita in more civitatis, nullam habent difficultatem: cognitionis sunt enim, non inventionis. At quæ consulum responsis explicantur, aut in verborum interpretatione sunt posita, aut in recti pravique discrimine. Quintilian, de Jure Civili.

BOSTON:

CHARLES C. LITTLE AND JAMES BROWN.

M DCCC XLV.

there respecting the present suit, may be found in 12 East, 209. The certificate of the judges was, that the defendant was unimpeachable of waste upon the estate in the bill mentioned; that, having cut timber thereon, she was entitled to the same as her own property, and that she had become tenant in tail after possibility of issue extinct. The sending of this certificate was not preceded by a statement of the reasons upon which it was intended to be founded, an omission which Mr. Maddocks has taken occasion to lament, in a note of some length, subjoined to his report of *The Attorney General v. The Duke of Marlborough*, 3 Mad. 519, in which just-cited case the question agitated in the present suit was adverted to.

LUPTON v. WHITE.

WHITE v. LUPTON.

[1808, AUGUST 8; DEC. 19.]

AGENT, or Bailiff, confounding his principal's property with his own, charged with the whole; except what he can prove to be his own; and, in this instance, the case of a breach of the terms, upon which the Court dissolved an Injunction, the inquiry was directed with costs (a).

The Court refused in such a case a prospective direction to admit books, not legal evidence; usual in a fair case; as, where from want of notice of an adverse claim a strict account cannot be given; merely giving liberty to apply upon any question of evidence.

Corresponding with the rule in Equity to charge an accounting party, who has wilfully confounded the fund with his own property, with the whole, throwing upon him the discharge, instances at law, where the Defendant having wilfully prevented the Plaintiff's proving the real value of his property, damages to the utmost value the article could bear were given: whether that should have been carried far beyond the possible value, *Quare*, [p. 439.]

Case by the old law of a wilful mixture by the owner of corn or flour with that of another: the value being unequal, and therefore not to be distinguished, the other took the whole, [p. 442.]

THE Bill, upon which the first of these causes was instituted, praying an account of lead ore, obtained under premises, called The Little Ing, in the manor of Beverley in Yorkshire, claimed by the Plaintiff, as his estate; and an injunction against continuing to work the mine. The Defendants were the owners of considerable

ant in tail after possibility of issue extinct: 12 East, 209. Mr. Maddock, vol. iii. 519, observes, that it would have afforded great satisfaction to the Profession, if the Judges had given the reasons for their Certificate; which has not been unusual. It is peculiarly to be regretted, that upon a subject, involving such abstruse doctrine, the Lord Chancellor, having in a very able discussion of old and obscure authorities, well justified the doubts, requiring his Lordship to call for the assistance of a Court of Law, obtained no more information than could be collected from short, dry, answers; one of which is expressed in ambiguous terms, neither following the question, nor meeting the difficulty.

(a) An agent is bound to keep the property of his principal distinct from his own, and if he mixes it with his own, the whole will be taken both at law and in equity, to be the property of the principal, until the agent shows clearly and satisfactorily the part that belongs to himself, and the part that belongs to his principal. See *Hart v. Ten Eyck*, 2 Johns. Ch. 108; 2 Black. Com. 405; 1 Story, Eq. Jur. § 468, 623; Story, Agency, § 205, 333; 2 Kent, Com. 364, 365.

If the goods can be easily distinguished, and separated, then no change of prop-

lead mines adjoining, and lessees under him; contending, that The Little Ing, which did not contain more than four or five acres, was comprehended in the leases. An injunction, having been obtained, was dissolved upon the undertaking of the Defendants, that, being permitted to continue to work the mines, which had been worked together, as one mine, distinct accounts should be kept of the ore, produced from under The Little Ing. An issue was directed; and the verdict having established the Plaintiff's title to those premises, an account was directed of the lead ore, &c. got by the defendants in the first cause under the close, called The Little Ing. The Master's Report stated, from the affidavit of the Defendant White, that the other Defendants were lessees under him, or otherwise concerned as partners in the Prosperous Mine, also situated in Beverley, rendering a certain duty in lead to him, as rent; that they were at the * entire risk and whole expense of working [* 433] that mine; and consequently the books of account, &c. were in their custody.

The Report farther stated from the affidavit of Findley, one of the Defendants in the first cause, that two books of account produced were the only books kept for entering the general accounts of the lead mines, including The Little Ing; and that all the ore, which during the years 1802 1803, and 1804, were got in Prosperous Mines and under Little Ing, was brought up through the shafts and levels of, and smelted and sold, as belonging to the Prosperous Mine. Two of the lessees stated, that before they entered upon any working within the limits of The Little Ing, they were apprehensive from the threats of Lupton, that some dispute might probably arise as to their right of getting minerals there: but, as the minerals within The Little Ing were comprised in their lease, they carried their workings into it; and continued them, until the first injunction was obtained; in consequence of which they desisted, until that injunction was dissolved; and upon renewing their workings they had the caution to direct their agent to lay into separate heaps, and to keep a distinct account of, all the minerals, that should be raised from Little Ing, and to inform the smelters, which was the particular ore, which came from that ground; that they might distinguish it.

The Master stated his opinion upon all the books produced, that the Defendants have not rendered a true account of the lead, got from The Little Ing; and that the account of sales of lead in the

erty takes place, and each party may lay claim to his own. If the goods are of the same nature and value, although not capable of an actual separation by indentifying each particular: yet, if a division can be made of equal value, (as in the case of a mixture of corn, or coffee, or tea, or wine, of the same kind and quality,) there each may claim his aliquot part. But if the mixture is undistinguishable, and a new ingredient is formed, not capable of a just appreciation and division, according to the original rights of each, the party, who occasions the wrongful mixture, must bear the whole loss. Story, Bailments, § 40; *Bond v. Ward*, 7 Mass. 123; *Dane's Abr.* ch. 76, art. 3, § 15; *Ayliffe, Pand.* b. 3, tit. 3, p. 291, 292; *Erskine's Just.* b. 2, tit. 1, § 17.

book, entitled "The Accounts of Little Ing," and several other books produced, have been so kept or contrived as to prevent a true discovery, as well of the ore, got by the Defendants Wood [* 434] and Co. from * under Little Ing, as of the lead produced therefrom; and that for the purpose of preventing a discovery of the ore, got from under Little Ing, and of the lead produced therefrom, the Defendants Wood and Co. caused the ore, got from The Little Ing, to be mixed with the ore, got out of their adjoining mine; and the ore from both mines was smelted together at the same hearth, and marked with the same mark and letter; that in payment of the duty in lead to the Defendant White no distinction was made between the lead, arising from the ore, got from one mine and the other; and, in order to prevent a proper examination of the workings under Little Ing, the Defendants permitted some of the workings to fall in; wilfully filled up other parts with rubbish; and drowned the lower part: so that no true estimate could be formed of the quantity of ore, got by the Defendants Wood and Co. from or under Little Ing; and under all the circumstances and upon all the evidence, the Master stated, that he found it impossible to take an account with any degree of accuracy of the ore, &c. got under The Little Ing.

Exceptions were taken to the Report; on the ground that the Master had not charged the Defendants with the sum of 23,986l. 9s 6d.; received by them as the value or produce of lead, which under the circumstances, proved before the Master, ought to have been made from the ore, got by them from under The Little Ing.

Sir *Samuel Romilly* and Mr. *Bell*, in support of the Exceptions. — The point, maintained by these Exceptions, is, that the Defendants ought to have been charged with the whole produce of these mines: leaving them to discharge themselves by showing, [* 435] what was the produce of their own * mine; upon the principle, that every presumption is to be made against an agent, who by his tortious Act has made it impossible for the Plaintiff to distinguish his property: a principle, that has been frequently acted upon.

In the case of *Panton v. Panton* (1) the Defendant remitted considerable sums, the property of the Plaintiff, with money of his own, to an agent, in London, to be laid out; and the securities were changed for the purpose of misleading, and making it impossible for the Plaintiff to distinguish his property: part being clearly the property of the Defendant. The Court held, that it was upon him to distinguish, what was his own; and an issue was directed; with the affirmative upon him: but, a compromise taking place, it was not tried. Upon the same principle is *Armory v. Delamirie* (2): the case of a diamond ring, found by a poor boy; and a jeweller, taking out the stone, and giving him a trifle, the jury were directed to give

(1) In the Court of Exchequer.

(2) 1 Str. 505.

the amount of the most valuable diamond. Your Lordship in the case of Mr. Jackson's executors (1) acted upon a similar principle.

This case has farther the peculiar circumstance, that these Defendants, in consideration that the injunction should be dissolved, and they should be permitted to proceed with their works, undertook to the Court, that the accounts should be perfectly clear and distinct. The effect of that undertaking is, that they were bound by contract to the Court to consider themselves as bailiffs: yet they have not only not kept distinct accounts of the ore produced, but by suppressing and fabricating evidence and other [* 436] management have deprived the Court of all means of having distinct accounts.

Sir Arthur Piggott, Mr. Richards Mr. Wear and Mr. White, for the Defendants, contended, that the proposition is extravagant, that, as the ore, produced from the Plaintiff's mine, has been mixed with the produce of the other, the Plaintiff should have the whole.

The Lord CHANCELLOR [ELDON]. — The Master's Report, stating, that he cannot take the account, which has been directed, is the subject of farther directions, rather than of Exception. The account was directed upon a familiar principle of equity; though the object might have been obtained in an action for mesne profits, or trover. An inquiry before a jury having ascertained satisfactorily, that the Plaintiff is entitled to what was under these premises, the Court was bound to enjoin the Defendants from proceeding: or, permitting them, with reference to the convenience of both mines, to proceed, that could be allowed only upon their undertaking to keep an account; and then they cannot be heard to say, they could not keep it. If the account does not satisfy the object and intention of that undertaking, it is not a compliance with the condition in that rational sense, in which it must be understood. If the result is, that the Master cannot take the account, it is clearly not for him, without a farther direction, to apply the great principle, familiar both at law and in equity, that, if a man, having undertaken to keep the property of another distinct, mixes it with his own, the whole must both at law and in equity be taken to be the property of the other, until the former puts the subject under such circumstances, that it may be distinguished as *satisfactorily, as it [* 437] might have been before that unauthorized mixture upon his part. There may be cases, in which the Master may charge parties upon that principle: but it must be under the direction of the Court; who will judge, whether the case is proper. I agree entirely with the Master, that under these circumstances he cannot take such an account as this Decree calls for. The consequence is, that upon farther directions it must either be referred back to the Master, with a direction to guide him as the mode of charging the Defendants, where he cannot take the account satisfactorily; or an issue must be

(1) *White v. Lady Lincoln, Kinderley v. The Duke of Newcastle, ante, vol. viii. 363.*

directed; taking care not to overlook the principle I have mentioned; which throws the proof upon the Defendants.

Therefore I shall not allow these Exceptions; but without prejudice to what the Court may think proper to do upon farther directions.

Dec. 19th. The cause being heard for farther directions, the same question was again argued: the Defendants pressing for a special direction to the Master to receive the books in evidence.

The Lord CHANCELLOR [ELDON].—This case comes before me under circumstances, in some respects different from any, which the Court has hitherto had to deal with in cases of a similar nature. The Defendant White, as far as he is concerned, is involved in it simply in consequence of his own undertaking. No misconduct, no fraud, are imputed to him. He is culpable, not morally, but only for having applied too little attention to his own interest. With regard to the other Defendants, this is a case of great and [* 438] *serious importance; especially with reference to the example, which the Court is to furnish; and in my view of transactions of this nature a Court of Equity ought to go to the extent of all, that is just, (and beyond that no Court ought to go) to restrain persons from dealing with the property of others, as these Defendants have dealt with the property of this Plaintiff.

An injunction having been obtained, the Court refused to relieve the Defendants against it, unless they would lay themselves under an obligation, which would prevent those difficulties, that had obstructed the administration of justice between these parties. With that view, upon an application to dissolve the injunction, the Court refused to interfere, except upon terms: accordingly, the Defendant White, who seems to have placed more confidence in his lessees and agents than they deserved, and the other Defendants, agreed to the terms proposed; that, as it would be inconvenient to their concerns, entangled as they had been with the working of the mines, claimed by the Plaintiff as his inheritance, to discontinue working, as they had done, if the Court would permit them to work under 'The Little Ing, they would account fully for all they should take from it, if it should appear, that the soil, and the mines under it, were the inheritance of the Plaintiff. They stand before the Court upon the faith of that undertaking; which they were bound to make good; as if a Receiver had been appointed, or the injunction continued; and these parties are to be considered, not as man acting towards man, but with reference to an undertaking by one man to leave the other as safe, as if the protecting hand of this Court had been over him.

A verdict has determined, that 'The Little Ing is the close of the Plaintiff; and it is now therefore established, that after [* 439] *the injunction issued these Defendants had taken the Plaintiff's property. The necessary consequence is, that all, which has been taken, has been taken by wrong; that of all, which has been taken, since the injunction was dissolved, a clear

account ought to be rendered: an account, free from difficulty. The account was prayed, and granted, accordingly; with the proper directions as to allowances and costs, which justice between parties under such circumstances prescribed; and that has produced this Report; establishing the facts, that, the Defendant White imprudently considering himself as having no concern with it, taking no care, that what had been wrongfully obtained was made good, but placing a most unwarranted confidence in his agents and lessees, the thing proceeds in such a way, that books were fabricated; the produce of the different mines mixed; no distinct accounts kept; workings allowed to fall in; and cavities filled up: so that I have no means of charging the Defendants with the fair amount of what they have taken; and the Master, speaking of the evidence, represents, that by contrivance it has become impossible to discover, what would be the result of a fair and just account of the produce of The Little Ing.

What then is the conclusion? If a man by his own tortious act makes it impossible for another to ascertain the value of his property, and that in a transaction, in which the former was, not merely under an implied moral obligation, but pledged by a solemn undertaking in a Court of Justice, that such should not be the state of things between them, by those means preventing the guard, which the Court would have effectually interposed, is the argument * to be endured, that, as the party, so injured, can- [* 440] not distinguish his property, therefore he shall have nothing? That is not the law of this country; as administered in Courts either of Law or Equity. The case (1) of the diamond ring, found by a poor boy, proves the contrary. He had not the means of showing the value. The person who took it from him, by wrong, prevented the jury from ascertaining the value by production of the ring, or other evidence. Therefore, as it was proved, that the Plaintiff's evidence had been destroyed by the act of that person, who ought to have refrained from placing the transaction in that state, the Lord Chief Justice directed the jury to find, that the stone was of the utmost value they could find; upon this principle, that it was the Defendant's own fault, by his own dishonest act, that the jury could not find the real value.

The case of *Panton v. Panton* (2) applies to this. A clerk in a banking-house at Chester remitted his own money, with that of his employer, to an agent in London, to be laid out upon security; and by management the securities were so changed, that the property could not be distinguished. The Court of Exchequer held, that, the confusion being occasioned by him, who so dealt with the property, the distinction lay upon him; and, if he could not distinguish, what was his own, the whole must be considered as belonging to the other.

(1) *Armory v. Delamirie*, 1 Str. 505.

(2) In the Court of Exchequer.

A principle, not dissimilar, though not precisely the same, governed me in the case of Mr. Jackson's executors (1). There [* 441] was no more duty imposed upon him * than upon these individuals. He had kept the account, and, as it appeared to me, not incorrectly, upon his own side: but, having kept it only upon his own, though bound to keep it upon the other, side, it was held, that he could not maintain a demand, to which under other circumstances he would have been fairly entitled. The decision was made, not upon the notion, that strict justice was done, but upon this; that it was the only justice, that could be done; and that no more could be done was the fault of Jackson himself; who, if he did not enable those parties to know, what demand they had upon him, could not be heard to say, he had any demand upon them.

Upon a principle of the same sort I ventured to go in the case of the late Lord Chedworth (2). Some part of the property clearly belonged to Edwards, the steward; and I thought myself entitled in the first instance to lay an injunction upon the whole fund. I do not advert to the case (3) of the horse, before Lord Loughborough, or to that of the dog, before me, in the Court of Common Pleas; as it is perhaps doubtful, where the law declares distinctly, that the value of the animal shall be given, whether a Judge is justified in directing a Jury to give a sum, far exceeding the real value. Those cases however do not interfere with the others.

This Report presents to the Court a case of violation of property, previous to the injunction; giving the right to an account upon ordinary principles. After the injunction was dissolved, the Defendants were permitted to use this mine upon a pledge of good faith to this Court, that a clear account should be produced; and [* 442] that the * Plaintiff should have no difficulty in ascertaining his property. If at the hearing it had been stated to me, that there would be any difficulty, I should probably have said at once, that it should be, not on him, but on the Defendants; and that, if they did not distinguish, what was his, all should be taken to be his. What are the cases in the old law of a mixture of corn or flour? If one man mixes his corn or flour with that of another, and they were of equal value, the latter must have the given quantity: but, if articles of different value are mixed, producing a third value, the aggregate of both, and through the fault of the person, mixing them, the other party cannot tell, what was the original value of his property, he must have the whole (4) and the principle goes to the full

(1) *White v. Lady Lincoln, The Duke of Newcastle v. Kinderley, ante*, vol. viii. 363.

(2) *Lord Chedworth v. Edwards, ante*, vol. viii. 46.

(3) *Ante*, vol. ii. 203, 4, *Newman v. Payne*; see the note.

(4) Sir William Blackstone observes the distinction between the Civil Law and our Law upon this point: the former, though giving the aggregate to the party, who did not interfere in the mixture, allowing the other a satisfaction for his loss: "but our Law, to guard against fraud, gives the entire property, without any account, to him, whose original dominion is invaded, and endeavored to be rendered uncertain, without his own consent." 2 Black. Com. 401, 5, referring to Popham, 38; 2 Bulstr. 325; 1 Hal. P. C. 513; 2 Vern. 516.

extent of what is now contended. Regretting the consequences in this instance to one of the parties, who is made answerable only for inattention to his own interest, I believe, there is no greater violation of property in this country than of property of this nature.

It is said, if the whole is to be understood to be the produce of The Little Ing, except so far as any part can be shown to be the produce of the Prosperous Mine, the effect is to determine, that the whole must be considered as the produce of the former; unless a special direction is given, that these books are to be received * in evidence before the Master. There are, I ad- [* 443] mit, many cases, in which this Court, giving an account, directs it to be taken with the admission of certain documents or testimonies, not having the character of legal evidence. If parties have been permitted for a long course of years to deal with property as their own, considering themselves under no obligation to keep accounts, as if there was any adverse interest, having no reason to believe, the property belonged to another, though it would not follow, that, being unable to give an accurate account, they should keep the property, yet the account would be directed, not according to the strict course, but in such a manner as under all the circumstances would be fit. The case however is widely different, where both parties knew, that the property was the subject of adverse claim; and those who desire to have the rules of evidence relaxed, had undertaken, that there should be no occasion for deviating from the strict rule: that there should be clear accounts; that the other party should have his property without hazard of loss from the want, or complication, of accounts. In a case of this nature, a previous direction to the Master, to receive such evidence, would introduce a most dangerous principle. The utmost length I can go in such a case is to give liberty to either party, if the Master in taking the account of the produce of the Prosperous Mine shall find difficulty as to receiving any evidence, to apply to the Court for directions upon that particular point. It is perfectly clear, that such a reservation will be necessary as to these books; even not considering the imputation which is cast upon them by the Master's Report; but the fact that better evidence will be wanting, is not sufficiently clear to warrant a prospective direction to the Master to receive them.

* The circumstance, that this difficulty, cast upon the [* 444] Plaintiff in recovering his right, is the consequence of the breach of an engagement with this Court, binds me to give even this relief at the cost of the Defendants. I do not mean, that, if any thing culpable, should arise before the Master upon the other side, that those costs should be included; but, with that exception, this relief should be given with costs; as it is proper to mark such a case upon the contract of individuals with the Court itself.

The Decree was accordingly made; directing the account; as it was prayed; charging the Defendants with the whole net produce

except what they shall prove to have been taken from the Prosperous Mine ; with all the costs of that inquiry, except as to any thing, that may occur, blamable on the part of the Plaintiff in the course of it, with costs ; and a special direction, that if any question as to the admission of evidence should arise before the Master in the course of the inquiry directed, either party should be at liberty to apply to the Court for directions upon such point of evidence (1).

THAT it is the first duty of every accounting party to be constantly ready with his accounts, see, *ante*, note 1 to *Lord Hardwicke v. Vernon*, 4 V. 411. The rule laid down in the principal case, that, as against an agent who has mixed the property of his employer with his own, so as to render it undistinguishable, the whole may, both at law and in equity, be taken to be the property of the employer, is well settled ; but the same rule does not, in all cases, hold against the creditors of the agent : for instance, if an agent pay money belonging to his employer into his own banking-house, and to his own general account, this money may not be distinguishable ; but, should the agent become bankrupt, the whole sum, which appears to be due to him from the bankers, will go to his assignees, and his employer can only come in as a general creditor under the commission : *Ex parte Townsend*, 15 Ves. 470. So, if the bankers had any account with the agent by way of set-off, that set-off would equally affect the money paid in to his account (though being, in truth, the money of his employer), as it would the agent's own money, supposing the bankers to have no notice displacing their equity : *Massey v. Banner*, 1 Jac. & Walk. 248 ; see note 3 to *Ex parte Sayers*, 5 V. 169, and note 1, to *Hassall v. Smithers*, 12 V. 119.

GARDNER v. ———.

[1808, DEC. 20.]

WRIT of *Ne exeat Regno*, upon a legal demand against an Attorney, on the ground of his privilege, by analogy to the case of equitable demands, refused (a).

A MOTION was made for a Writ of *Ne exeat Regno*, to restrain the Defendant, who was an attorney, from going abroad, [* 445] until he had given security to pay the * sum of 69l. 15s. or to abide the event of an action depending for the recovery of that sum from him for goods sold and delivered. The affidavit stated, that the Defendant had avowed his intention of going to the East Indies ; and that he had taken his passage in a ship, which was expected to sail in the beginning of January.

Sir *Samuel Romilly* and Mr. *Heald*, in support of the Motion, admitting, that, with the exception of the case, of a decree for alimony (2), this writ is granted only upon equitable demands, observed,

(1) *Ante*, *Lord Hardwicke v. Vernon*, vol. iv. 411, and the note, 418.

(a) When a writ of *ne exeat* will be issued in the United States, see, *ante*, note (a) *De Carriere v. De Calonne*, 4 V. 577 ; notes (a) and (b) *Russell v. Ashby*, 5 V. 96.

(2) *Ante*, *Shafloe v. Shafloe*, *Dawson v. Dawson*, *Oldham v. Oldham*, vol. vii. 171, 173, 410 ; *Haffey v. Haffey*, xiv. 261.

that the reason, that the party cannot be held to bail, applies to the privilege of this Defendant.

The Lord CHANCELLOR [ELDON] stopping Mr. *Hall*, for the Defendant, said, he had no jurisdiction; and refused the writ (1).

For a summary of the leading rules, with respect to writs of "*ne exeat*," see, *ante*, the notes to *De Carriere v. De Calonne*, 4 V. 577.

MOUNTFORT, *Ex parte*.

[1808, DEC. 23; 1809, FEB. 3.]

ORDER for the appointment of a person to act as guardian (the father being living and for a reference as to maintenance, but not for a Receiver, upon a petition, without any suit instituted (2), (a).

A PETITION was presented by a male infant, of the age of eighteen, no Bill being filed: the Petition, supported by affidavits, stating, that the petitioner, as heir at law to his grandmother, was entitled to freehold estates, subject to a mortgage; that his father entered *into possession of the estate; continued to receive the [* 446] rents and profits, until possession was taken by the mortgagee; applied the rents and profits, received by him, to his own use; that he is in insolvent circumstances; and is so negligent of the interests of the petitioner, that if he shall continue to receive the rents and profits there is no probability of their being ever applied to the petitioner's use: on the contrary they will be in danger of being wasted and entirely lost to the petitioner.

The Petition, farther stating, that no guardian had been appointed, and that the petitioner has no near relation, except his father, and a sister, under the age of twenty-one, prayed that Richard Rutter, to

(1) See the notes, vol. i. 95; iv. 592.

(2) See the note, *post*, 448.

(a) Whenever a father is guilty of gross ill treatment or cruelty towards his infant children; or is in constant habits of drunkenness and blasphemy, or low and gross debauchery; or he professes atheistical or irreligious principles; or his domestic associations are such, as tend to the corruption and contamination of his children; or he otherwise acts in a manner injurious to the morals or interests of his children; in every such case, the Court of Chancery will interfere, and deprive him of the custody of his children, and appoint a suitable person to act as guardian, and to take care of them, and to superintend their education. 2 Story, Eq. Jur. § 1341. The English cases on this subject are numerous. See also *Ex parte Wollstoncraft*, 4 Johns. Ch. 80; *Ex parte Waldron*, 13 Johns. 419; *The People v. Mercein*, 8 Puige, 47; *U. States v. Green*, 3 Mason, 482. As to Chancery guardians, see 2 Kent, Com. (5th ed.) 226-231.

In ordinary cases, at least where the property is small, the Court will, upon petition, without requiring the more formal proceedings by bill, settle a due maintenance upon the infant. 2 Story, Eq. Jur. § 1354. See on the subject of maintenance, notes (a) and (b) *Greenwell v. Greenwell*, 5 V. 199; note (a) *Ex parte Petre*, 7 V. 403; 1 Macpherson, Infants, (Lond. ed. 1841), ch. 22, p. 213.

REPORTS

OF

H. C. Neal

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT OF JUDICATURE

OF THE



STATE OF INDIANA.

WITH TABLES OF THE CASES AND PRINCIPAL MATTERS.

BY ISAAC BLACKFORD, A. M.
ONE OF THE JUDGES OF THE COURT.

VOL. II.

CONTAINING THE CASES FROM NOVEMBER TERM, 1826, TO NOVEMBER
TERM, 1831, BOTH INCLUSIVE.

Indianapolis:
PRINTED BY MORRISON AND BOLTON.
: : : : :
1834.

Nov. Term,
1830.

M^CCREARY
v.
FIKE.

ly discharged; 4thly, that the evidence authorised a judgment for the plaintiff. The first two objections are not tenable. The practice is well settled, that the defendant, under the circumstances of the case, had a right to demur, and the plaintiff was bound to join in demurrer. There is no foundation for the third objection. The discharging of the jury was not erroneous. In these cases, there are two modes of proceeding. Whenever a demurrer to evidence is allowed, the jury may assess the damages conditionally; or they may be discharged without such assessment. In the latter case, should the demurrer be overruled, the damages may be assessed by another jury on a writ of inquiry. 1 Arch. Pr. 209.

On the fourth objection, the plaintiff must succeed. The defendant, to support the judgment, contends, that the contract set out in the statement of the demand, differs from the one proved; the former showing that all the notes were to be sued on; the latter, that it was necessary to sue on the two only which were due. This position of the defendant is not sustainable. The several statements of the cause of action relative to what notes were to be sued on, are, when taken together, consistent with the proof. The notes alluded to in the statement marked C, must have reference to the two notes which were due, and which are described in the previous statement marked B. The description of the cause of action, and the evidence, both show that the defendant's liability to the plaintiff, depended on the result of a suit against *Thompson* on the notes due in *December*, 1829. This evidence relative to the notes to be sued on, together with the other testimony given in the cause, conduced to prove all the facts necessary to support the action. Whether, from the evidence set out in the record, a jury would have found for the plaintiff, is not for the Court to decide. There was proof from which a jury might have inferred that the action should be supported; and that was sufficient for the plaintiff. It is our opinion, therefore, that the judgment of the Circuit Court on the demurrer to evidence should have been in favour of the plaintiff.

Per Curiam.—The judgment is reversed, &c. with costs. Cause remanded, &c. (1).

Brown, for the appellant.

Fletcher and Merrill, for the appellee.

(1) A re-hearing was granted in this case; but the same judgment in it, as above, was afterwards rendered. Nov. Term,
1830.

BRACKEN-
RIDGE
V.
HOLLAND.

BRACKENRIDGE, Administrator, v. HOLLAND and Others.

The jurisdiction of a Court of Chancery extends to the accounts of administrators, though settled in the Probate Court, if there be evidently a mistake or fraud in the settlement.

A trustee, no matter how or from whom he derives his authority, cannot purchase the trust-estate so as to make a profit to himself. He is not prohibited from purchasing; but his purchase, when made, is for the benefit of the *cestui que trust*, who may, if he apply within a reasonable time, have a re-sale. If the property be offered for sale a second time, and there be no advance, the trustee is held to his purchase.

If an administrator, authorised by an order of Court to sell, at public sale, the real estate of his intestate for the payment of debts, purchase the land himself at the sale; and, afterwards, sell the same at an advanced price; he is liable to account for the profits to the heirs, for whose benefit the administrator's purchase must be considered to have been made. And the effect is the same, whether the purchase be made by the administrator alone, or jointly with another; or whether it be made in person or by an agent.

If, owing to the conduct of the administrator, any uncertainty exist as to the amount of the profits made by him on the purchase, he will be chargeable with the largest amount which, from the circumstances, he can be presumed to have realized.

It is a rule, both at law and in equity, that if a person having charge of the property of another, so confounds it with his own that it cannot be distinguished, he must bear all the inconvenience of the confusion; and, if it be a case of damages, the damages given against him will be to the utmost value of the property.

ERROR to the Franklin Circuit Court.

HOLMAN, J.—The heirs of *John Holland*, deceased, filed their bill in chancery, stating that their father in his life-time, about the 1st of *November*, 1817, purchased of *Robert and Joseph Brackenridge*, a tract of land for the sum of 2,400 dollars; of which he then paid 600 dollars, and was to pay the balance by instalments, for which he executed several notes, bearing interest from the date, the last payment to be made in six years;—that their father died in 1818, and administration of his estate was committed to *Joseph Brackenridge* and *George L. Murdock*;—that the administrators received large sums of money for the personal property, and for debts due to the decedent, which, with the annual profits of the land, would have enabled them to pay off the notes for the purchase-money of the land as they became due; there being no other debts of any consid-

Tuesday,
December 14.

Nov. Term,
1830.

BRACKEN-
RIDGE
V.
HOLLAND.

nable amount against the decedent;—that, notwithstanding this, *Brackenridge*, in the absence of *Murdock*, filed an affidavit in the Probate Court, stating that the personal estate was insufficient to pay the debts, and thereby procured an order of the Probate Court, in *June*, 1819, for a sale of the land;—that he made no return of his proceedings under said order; but, from a deed in the recorder's office, it appears that *Robert* and *Joseph Brackenridge*, on the 20th of *August*, 1819, conveyed the said land to *Piatt*, *Grandon*, and *Armstrong*, in consideration of 2,500 dollars;—that, by the records of the Probate Court of the 25th of *February*, 1823, it appears that the administrators made a settlement of the accounts in that Court; and, in the account then exhibited, the estate is credited by 1,600 dollars as the price of the land, instead of the sum of 2,500 dollars;—that, from this settlement, it appears that there was then in the hands of the administrators, the sum of 209 dollars and 86 cents; but the bill charges, that this settlement did not embrace the moneys received by *Murdock*, and was not a correct account of the moneys received by *Brackenridge*. The bill further charges, that *Murdock* has received and wasted moneys belonging to the estate to the amount of 600 dollars, and states that, in 1826, *Joseph Brackenridge* died, and *Robert Brackenridge* was appointed his administrator. *Robert Brackenridge* and *Murdock* are made defendants. The bill prays for a full account of the administration, and that the estate of *Joseph Brackenridge*, in the hands of *Robert Brackenridge*, may be charged with the 2,500 dollars for which the land was sold.

Robert Brackenridge pleaded, in bar of the action, the settlement made in the Probate Court by *Joseph Brackenridge*. To this plea there was a demurrer, which was sustained by the Circuit Court. He then answered; and his answer admits the sale of the land to *Holland*, but states that a large quantity of personal property was included in the contract. He states, that he does not know the value of the personal estate, or the manner in which it was administered, but by reference to the account rendered by *Joseph Brackenridge* in the Probate Court, which he believes to be correct; that the land was sold, by virtue of the order of the Probate Court, at public auction; that the sale was fair; that he and his partner, *Joseph Brackenridge*, became the purchasers at the sum of 1,600 dollars, which,

he avers, was the full value; and that they made the purchase for themselves, and not for the benefit of the heirs. He admits that he and his partner sold the land to *Piatt, Grandon*, and *Armstrong*, and that the consideration that is expressed in the deed is 2,500 dollars; but he says that that was not the real consideration, as the land was exchanged, with other real property, for a lot of merchandise estimated at 6,000 dollars; and that he does not believe it would have sold for 1,600 dollars in cash.

Murdock answered, and, with some account of his separate administration, denies taking any part in the settlement in the Probate Court; stating that it was made without his knowledge, and that he had no hand in receiving or disbursing any part of the estate set forth in that account. He denies having had any concern in the sale of the land; and states that, being about to leave the state, his co-administrator expressed an opinion that the estate was perfectly solvent, and that he was willing to take back the land in discharge of the debt due from the estate to himself and partner; and that during his absence the land was sold.

We learn from the depositions, that *Holland*, when he purchased the land, received with it of *R. and J. Brackenridge* about 500 dollars worth of personal property, which formed a part of the contract; that 1,600 dollars was a high price for the land, at the time it was purchased by *R. and J. Brackenridge* in 1819; but that no material variation had taken place, in the value of the land, between the years 1817 and 1819. The order of the Probate Court shows, that the Court fixed the terms of credit, the day and place of sale, and ordered their clerk to make out advertisements, &c. The auctioneer testifies that the sale was public, that a large collection of people were present, that the land was cried for a long time, and was bid off by *John Shanks* for *R. and J. Brackenridge*. *Grandon*, one of the firm, to whom *R. and J. Brackenridge* sold the land, states that it was purchased by them, with other real property, in a contract for merchandise; that the only reason why they purchased the land was, that they had a large quantity of merchandise, and were anxious to dispose of it. *Murdock's* deposition was taken; in which he makes some charges against his co-administrator of moneys not accounted for, and repeats the statement in his an-

Nov. Term,
1830.

BRACKEN-
RIDGE
v.
HOLLAND.

Nov. Term,
1830.

BRACKEN-
RIDGE
V.
HOLLAND.

swer, that his co-administrator expressed a willingness to take back the land in discharge of the debt to himself and partner.

On the final hearing of the cause, the Circuit Court entered a decree against *Robert Brackenridge*, as administrator of *Joseph Brackenridge*, for the sum of 559 dollars and 62 cents, with interest from the 25th of *February*, 1823, amounting in all to 808 dollars and 86 cents, to be levied of the goods, &c. of his intestate; and a decree against both of the defendants, for 104 dollars and 25 cents principal and interest, being a sum for which the estate of *Joseph Brackenridge* and *Murdock* were jointly liable; and postponed the account of the separate administration of *Murdock* for further consideration. From this decree, *Brackenridge* alone appealed to this Court.

Two leading questions are presented for our determination. The first regards the jurisdiction of a Court of chancery, to inquire into a settlement of an administration account in the Probate Court. The second, the right of an administrator to purchase lands which he, as administrator, is authorised to sell.

The first has been settled, at the present term, in the case of *Allen v. Clark*. It is there determined, that the settlement in the Probate Court is to be taken as *prima facie* correct, but is not conclusive; that, on a proper case being made, the account may be re-examined in a Court of chancery. Here, the disposition of the land presents a case, that more particularly requires the interposition of a Court of chancery.

The second question seems also to be settled. A trustee, no matter how or from whom he derives his authority, cannot purchase the trust-estate so as to make a profit to himself. There is no general rule that he shall not be a purchaser; but if he is, his purchase is for the benefit of the *cestui que trust*. If the trustee to sell becomes a purchaser, however fair the transaction, it is subject to an option in the *cestui que trust*, if he comes in a reasonable time, to have a re-sale. *Campbell v. Walker*, 5 Ves. 678. If it is offered for sale a second time, and there is no advance of price, the trustee is held to his purchase. *Lister v. Lister*, 6 Ves. 631. Where the sale was effected through the medium of a trustee, and he became the purchaser, though without fraud, and by auction, the sale was set aside; the circumstance of its having been by auction made no difference. *Sanderson v. Walker*, 13 Ves. 600. A trustee is not permitted

to purchase a mortgage, or judgment, that is a lien on the trust-estate, for his own benefit. *Green v. Winter*, 1 J. C. R. 27.

An executor, acting with regard to the testator's property in any other manner than the trust requires, is answerable to the *cestui que trust* for any gain, and liable for any loss. *Pietly v. Stace*, 4 Ves. 620. In *Maryland*, an administrator or executor cannot purchase at his own sale, and the confirmation of such purchase in the Orphans' Court, does not preclude the Court of chancery from setting it aside. *Conway v. Green*, 1 Har. & J. 151. In *North-Carolina*, an executor is not permitted to become a purchaser in a sale made by him as executor, notwithstanding such sale be public, necessary, fair, and for a full price. *Ryden v. Jones*, 1 Hawks. 497. In *South-Carolina*, the same principle is maintained to a general extent. *Perry v. Dixon*, 4 Desauss. 504. The three last cases are given on the authority of 3 Wharton's American Digest, 276, 278. The case of *Guier v. Kelly*, 2 Binn. 294, cited by the counsel for the appellant, accords in principle with these decisions. A contrary doctrine seems to prevail in *Virginia*; but we think from the foregoing cases, and many more that are in accordance with them, that the purchase made by *R. and J. Brackenridge*, under the order of the Probate Court, must be considered as made for the benefit of the heirs. The circumstances of the time, place, terms of credit, and manner of giving notice of the sale, being regulated by the Probate Court, does not materially change the case, as much was still left in the power of the administrator; and he might have exerted an influence on the sale that lies beyond the ordinary means of detection. The object of the rule is to banish from his mind all thought of speculating on the trust-estate. A method is suggested in the books, whereby he might legally become the purchaser. If the land was publicly exposed to sale, and he was willing to go beyond the highest bid, he might postpone the sale, file a bill, or report the fact to the Court from whence he derived his authority; showing the amount of the highest bid, and that he was willing to give more. The Court might order that he should have the land. *Davoue v. Fanning*, 2 J. C. R. 261.—*Campbell v. Walker*, 5 Ves. 678.

This case is not altered, in principle, by *Robert Brackenridge* uniting with the administrator in the purchase, nor by the land

Nov. Term,
1830.

BRACKEN-
RIDGE
V.
HOLLAND.

Nov. Term,
1830.

BRACKEN-
RIDGE
V.
HOLLAND.

being bid off for them by *Shanks*; for the rule extends to a purchase made by a trustee for another person; *ex parte Bennett*, 10 Ves. 381; and to a purchase made by a third person for the wife of the trustee. *Davoue v. Fanning*, 2 J. C. R. 252. In this last case, the executor was authorised to sell lands to raise legacies for the testator's children, of whom the wife of the executor was one. The executor and his wife authorised a third person to purchase in trust for the wife. After the purchase, large improvements were made on the land. Chancellor *Kent*, after reviewing a long train of uniform decisions on the subject, ordered a re-sale: the land to be set up at a sum which included the price of the former purchase, and the value of the improvements; and, if it would not sell for more, the purchase to stand, but if it sold for more, the former sale to be vacated. The rule mentioned in some of these cases, that the *cestui que trust* must apply in a reasonable time to have a re-sale, or the purchase will be considered valid, does not apply in this case. Most of the heirs are still minors, whose interest is seldom affected by lapse of time; besides, the sale of the land by *R. and J. Brackenridge* to *Piatt, Grandon, and Armstrong*, in less than two months after the purchase, and before any report was made of the proceedings under the order of sale, precluded the heirs from demanding a re-sale. In such a case, the rule is, that the trustee shall account for all the profits he has made. One of several trustees having purchased the trust-property, and afterwards sold it at a profit, was decreed to account for that profit. *Whichcote v. Lawrence*, 3 Ves. 740. In *Randall v. Errington*, 10 Ves. 422, there was a fair sale, and the trustee purchased at auction for a full price, yet as he had sold a part at some profit, the Court opened the sale, at the instance of the *cestui que trust*, as to the parts unsold, and compelled the trustee to account for the profits on the parts he had sold. An executrix suffered land, of which the testator died seized, to be sold under a mortgage, and became the purchaser in her own right, and afterwards sold it; and she was held accountable to the heirs for the proceeds of the sale. *Evertson v. Tuppen*, 5 J. C. R. 497 (1).

The most serious difficulty, in this case, is to determine the amount of profits made by *R. and J. Brackenridge* in selling this land to *Piatt, Grandon, and Armstrong*. The consideration in the deed is 2,500 dollars, which is 900 dollars more than the

Nov. Term,
1830.BRACKEN-
RIDGE
V.
HOLLAND.

price of the first sale; but the land was exchanged with other property, for a lot of merchandise. This difficulty, however, arises from the act of the administrator, and he is chargeable with all the inconveniences that have resulted from that act. The rule both in law and equity is, that if a person having charge of the property of another, so confounds it with his own that it cannot be distinguished, he must bear all the inconvenience of the confusion. If it be a case of damages, damages will be given against him to the utmost value of the articles. *Lupton v. White*, 15 Ves. 432.—*Hart v. Ten Eyck*, 2 J. C. R. 62. *Armory v. Delamirie*, 1 Strange, 505. This rule, applied in all its strictness, would charge the administrator with the nominal amount, stated in the deed as the consideration of the conveyance; unless he could show that the consideration was a less sum. And, although that sum was received in merchandise, the case would not be altered, unless it was clearly shown that there was a difference between that amount in merchandise and in cash, and what that difference was. There are some other facts in the case that have a remote bearing on this question. A short time before the sale of this land by the administrator, he expressed to his co-administrator a willingness to take back the land in discharge of the original purchase-money, which then amounted to near 2,000 dollars; which would have allowed the estate of *Holland* nearly 400 dollars more than he has accounted for. This land was purchased by *Holland* of *R. and J. Brackenridge* in 1817, for 1,990 dollars, allowing 500 dollars as the price of the personal property, and supposing 500 dollars of the money advanced by *Holland* were to pay for the personal property. Then, 100 dollars were advanced for the land. For the balance a credit was given, but it bore interest from the time of the purchase. Then, at the time of the administration sale, the amount due for principal and interest, together with the sum advanced, was but little short of 2,900 dollars; which was the sum that the heirs of *Holland* might be said to be paying, and *R. and J. Brackenridge* receiving for the land, at the time they bid it off at 1,600 dollars, and at the time they sold it, as they say, for the nominal consideration of 2,500 dollars; and we learn that no material variation in the price of the land, had taken place between the time when *Holland* purchased, and the time of the sale to *Piatt, Grandon, and Armstrong*. We men-

Nov. Term,
1830.

BRACKEN-
RIDGE
v.
HOLLAND.

tion these circumstances, not as presenting any definite criterion of the profit made by the administrator, but to show that he has but little reason to complain of the decree of the Circuit Court.

There is so much obscurity in the accounts of both the administrators, as to their separate and joint administration, that we are not able to discover the precise data upon which the Circuit Court predicated its decree; but this is unimportant, as we are fully satisfied that the separate decree against *Brackenridge*, from which alone it is presumed he appealed, is authorised by the facts in the case, and must be affirmed.

Per Curiam.—The decree is affirmed, with 2 per cent. damages and costs.

M'Kinney and Caswell, for the plaintiff.

Morris, for the defendants.

(1) *Vide Whelpdale v. Cookson*, 1 Ves. sen. 9.—Same case stated more at large, *Belt's Supp.* 7. "Although there is no positive rule, that a trustee to sell shall not, in any case, be himself the purchaser, inasmuch as he is not precluded from entering into a new contract with his *cestui que trust*, yet he is not permitted in any other case to make a profit to himself. *Whitcomb v. Lawrence*, 3 Ves. jun. 740. Upon which see *Ld. Eldon C.'s* observations, 6 Ves. 626.

The purchase in *Coles v. Trecothick*, 9 Ves. 231, was supported upon the ground of a distinct and clear contract with the *cestui que trust*, he having the fullest information, and having the sole management; the trustee being passive as to the latter circumstance. *Fox v. Mackreth*, 2 Bro. 400, and affirmed on appeal in *Dom. Proc.* 1791, is considered as a leading case in support of the rule, that a trustee for sale shall not take advantage of his situation so as to purchase for his own benefit.

To set aside such a purchase, it is not incumbent upon the party to show that the trustee has made an advantage, 8 Ves. 348; but it is in the choice of the *cestui que trusts* to judge for themselves whether they will take back the property or not, 6 Ves. 627; so that in such a case the trustee can never be allowed to retain an advantage, but may suffer a loss. *Lister v. Lister*, 6 Ves. 631.

This doctrine is not confined to trustees, but extends to assignees under commissions of bankrupt, solicitors, agents, and in short all persons having a confidential character. *Ex parte Lacey*, 6 Ves. 625.—*Ex parte Hughes* and *Ex parte Lyon*, ib. 617.—*Ex parte Atwood and Owen v. Foulkes*, cited ib. 630, note b.—*Ex parte James*, 8 Ves. 337. See *M'Enzie v. York Buildings Company*, *Dom. Proc.* cited 6 Ves. 639. The principle being as above, it seems that the sale being by auction makes no difference. See 8 Ves. 348.—*Nelthorpe v. Pennyman*, 14 Ves. 517." *Belt's Supp.* 10, 11.

REPORTS.

OF

CASES

ARGUED AND DETERMINED

IN THE

SUPREME JUDICIAL COURT

OF

MASSACHUSETTS.

By THERON METCALF.

VOLUME XI.

BOSTON:

CHARLES C. LITTLE AND JAMES BROWN.

1848.

which it was stated, that if the defendant, after the publication of the libel by his agents, saw the piece and justified its publication, by another article published in a subsequent paper, he would be liable in like manner as though he had originally known of the publication ; and that, on this point, the jury would consider the character of the article published in the succeeding week. It is insisted, on the part of the defendant, that the libel complained of having been published June 27th, and this action instituted before the publication of the second article, the liability of the defendant must be fixed by the facts existing at that time, and that the subsequent publication of July 4th, being made after the date of the writ, can have no effect to charge the defendant in the present action. This position, we think, is untenable. In the ordinary case of a defendant, who was personally the publisher of the article alleged to be libellous, his subsequent conduct, arising either from his silent acquiescence in a construction generally and publicly given to the article, or his open avowal of his meaning and purpose in publishing it, might be resorted to as furnishing evidence of the true character and meaning of the article alleged to be libellous. But this species of evidence is peculiarly pertinent, and is of more moment, where the defendant is an absent proprietor of a public newspaper, and the article alleged to be libellous was printed by his agents or servants during his absence. If he could avail himself of a defence founded upon the fact that the publication was made contrary to his intent, and against his orders, or through some fraudulent act of another, he should avail himself of the earliest practicable opportunity to disavow the publication, and to disown it and repudiate it, in plain and direct terms, such as will, as far as possible, correct the error, and repair the wrong unintentionally inflicted through the columns of a newspaper, of which he is the proprietor. If, on the contrary, he subsequently publishes an article in reference to such previous article, giving it his sanction, or omitting to repudiate it and retract the charge contained in it, such subsequent article may properly be introduced as indicative of the true position

 Willard v. Rice & another.

of the proprietor of the paper, as to the previous article. It is true that the question of libel or no libel relates to the first publication ; but that question may be materially affected by subsequent acts or declarations of the publisher. The jury might therefore well be directed to consider the fact of such subsequent article being published, and from it might be authorized to draw inferences as to the meaning of the previous article, and whether it was published with or without the approval of the proprietor of the paper. The instructions upon this point were correct. All the objections taken by the defendant are therefore overruled.

Judgment on the verdict.

LEVI WILLARD vs. CHARLES RICE & another.

11m 453
167 329

If a mortgagor of goods, who is intrusted with the possession, intermix them, purposely or through want of proper care, with his own goods, so that they cannot be distinguished, and consign them for sale to a third person, who sells them, the mortgagee is entitled to recover of the consignee the value of the whole.

TROVER for 527 dozen of palm leaf hats. At the trial before *Hubbard, J.* it appeared that *B. G. Sampson*, on the 22d of March 1842, mortgaged to the plaintiff a quantity of hats in New York, and the goods in a store in Keene, (New Hampshire,) among which were 450 dozen finished, and 300 dozen unfinished, palm leaf hats, and 7000 palm leaves. There was evidence tending to prove that the plaintiff, immediately after the mortgage was made, took possession of the mortgaged property, and sent *Sampson* to New York, to sell the hats there, and, with the proceeds, purchase goods in the plaintiff's name ; that *Sampson* did so, and sent the goods, which he so purchased, to the store in Keene ; that the plaintiff carried on business in said store, so far as to sell the goods mortgaged, and those so received from New York, and received pay, to a considerable extent, in palm leaf hats ; that *Sampson* continued in said store, and received large

quantities of unfinished palm leaf hats, in payment of debts due to him on his store books ; and that said hats, so received, were by him mixed indiscriminately with the mortgaged hats and the hats received by the plaintiff in pay for goods sold by him as aforesaid, so that they could not be distinguished. It appeared that, within a month after the mortgage was given, over 600 dozen of unfinished hats were received into the store, from the sales of goods, and from the aforesaid debts, and that hats were continually taken from the store and finished ; but it did not appear on whose account this was done. It was in evidence, that about the 1st of May 1842, Sampson took, for the plaintiff, 400 or 500 dozen hats, which had been finished, after the mortgage was made, from those that were in the store when the mortgage was made, and from those that were received into the store afterwards, and sent them to New York, where they were sold by him ; that at the time when said hats were so sent to New York, or immediately after, the hats in question in this action were taken from the store and sent by Sampson to the defendants, for sale. The question in the case was, whether any of the hats, so sent to the defendants by Sampson, were included in the mortgage.

The judge instructed the jury, that "if Sampson had mixed the hats, which he received after the plaintiff had taken possession, indiscriminately, with those mortgaged by him, and with those received, on account of the plaintiff, from the sales of the mortgaged goods, and of the goods brought from New York, so that the same could not be distinguished, then the plaintiff would be entitled to hold the same, on account of the debts due to him from Sampson, as well as the other hats ; and that the defendants, if they afterwards received the hats in question from the mixed lot, and sold them by Sampson's order, would be liable, in this action, to the plaintiff, for their value."

A verdict was found for the plaintiff, subject to the opinion of the whole court as to the instructions given to the jury.

Hartshorn, for the defendants. By the common law as

 Willard v. Rice & another.

to confusion of goods, the intermixture, in order to give an owner of part a right to the whole, must be wilful and fraudulent, and not accidental or by consent. *Ryder v. Hathaway*, 21 Pick. 298. Story on Bailm. § 40. 2 Kent Com. (3d ed.) 364. *Treat v. Barber*, 7 Connect. 275. *Barron v. Cobleigh*, 11 N. Hamp. 558. It should have been left to the jury to decide whether there was not a consent of the plaintiff to the intermixture.

F. H. Dewey, for the plaintiff. There is no ground, on the evidence in this case, for inferring that the intermixture of the hats was unintentional. It was made purposely, and the party who made it must bear the loss. *Ward v. Ayre*, Cro. Jac. 366. 2 Bl. Com. 405. 3 Dane Ab. 117. *Lupton v. White*, 15 Ves. 439, 442. *Hart v. Ten Eyck*, 2 Johns. Ch. 62. *Brackenridge v. Holland*, 2 Blackf. 377.

SHAW, C. J. The defendants, holding the goods as the consignees of Sampson, can only stand on his title, and make the same defence, after conversion proved, as he could make. That defence is, that part only of the identical hats, which came to the hands of the defendants, were included in the plaintiff's mortgage, and that the residue were Sampson's own goods. This leads to the only question of law, that is raised by the report, viz. whether the rule of law prescribed by the judge, in his instructions to the jury, was correct. The jury were instructed, that if Sampson intermixed the hats received from other sources, and which were his own, with those mortgaged, so that they could not be distinguished, the mortgagee had a right to hold the whole. This instruction, taken in connexion with the subject matter, and the facts in proof, we think was right. Sampson was the mortgagor, but, being intrusted with the possession of the goods, it was his duty to keep them separately, and preserve the mortgagee's property. His intermixing them purposely, or through want of proper care, was a violation of his duty, and unlawful. As his own could not be distinguished, he could take none of the mixed parcel without taking the plaintiff's, which he had no right to do; and as against him and his consignees, the plaintiff

 Lamb v. Hicks.

must hold the whole. *Hathaway v. Ryder*, 2 Pick. 298.
Colwill v. Reeves, 2 Campb. 576. 2 Kent Com. (3d ed.) 364.
Judgment on the verdict.

 DAN LAMB vs. HORACE P. HICKS.

In an action on the Rev. Sts. c. 19, § 6, to recover double the value of a partition fence erected by the plaintiff, after the defendant's refusal to erect it, it is necessary to prove that the fence viewers gave the defendant notice of their meeting, before they adjudged the fence sufficient and appraised the value thereof: But as such adjudication and appraisal are one transaction, and are to be made at the same time, it is not necessary that the fence viewers should give the defendant a separate and distinct notice of the two purposes of their meeting.

When a plaintiff, who has erected a fence which the defendant has refused to erect, demands of the defendant double the sum ascertained and certified by the fence viewers, as the value of such fence, and also demands the fence viewers' fees, which are not legally taxed, the demand for each item is in its nature several, and the demand for the fees does not render void the demand for the other sum.

A partition fence on land that is covered, a part of the year, with the waters of an artificial mill pond, but is occupied and used as pasture or mowing land during another part of the year, is not a water fence, within the meaning of the Rev. Sts. c. 19, §§ 9, 14.

ASSUMPSIT for money laid out and expended. The action was founded on the Rev. Sts. c. 19, § 6, to recover double the value of a fence erected by the plaintiff on the division line between the plaintiff's and defendant's lands in Charlton. The plaintiff also claimed to recover a sum which he had paid as fees to the fence viewers, who assigned said fence to the defendant, to be made by him, and which he had neglected and refused to erect and maintain.

At the trial in the court of common pleas, before *Merrick, J.* the plaintiff gave in evidence a paper, dated August 17th 1844, signed by two of the fence viewers of Charlton, which (after stating that a controversy had arisen, between the plaintiff and defendant, about their rights in a partition fence between their lands, and that said fence viewers, on the application of the plaintiff, had given due notice to the defendant) set forth an assignment, by courses and distances, of the fence, to be made and kept in repair by each of the parties,

Lamb v. Hicks.

and directed the plaintiff to build his part thereof within three days, and the defendant to build his part thereof within seven days.

It was in evidence that the above mentioned division and assignment were duly recorded in the town clerk's office in Charlton; that the defendant had due notice of the time and place of the meeting of the fence viewers, and of the assignment made by them, and the direction when he should make his part of the fence; that he did not make said fence, nor cause it to be made, within the time prescribed; and that the plaintiff made it after the expiration of said time.

The plaintiff also gave in evidence the following paper, signed by two of the fence viewers, who made the aforesaid division and assignment of the fence: "The undersigned, two of the fence viewers of the town of Charlton, duly chosen and sworn, having heretofore surveyed a certain fence between the enclosure of Dan Lamb and Horace P. Hicks in said Charlton, and after having adjudged the same to be insufficient and illegal, did order and direct that the said Horace P. Hicks should rebuild the same within seven days from the date of our order; and the said Horace P. Hicks not having complied with said order, the said Dan Lamb, at his own proper cost and charge, has rebuilt the same. And we notified the said Horace P. Hicks and Dan Lamb to appear at the time and place appointed by us to review the said fence, and after having examined said fence, we find it to be built according to law. And we now appraise the said fence at the sum of twenty dollars and sixty seven cents, and we certify that our fees for attending that service are as follows:

For viewing said fence half day each,	\$1.00
For surveying and appraising the same, and notifying, &c.,	2.00
	<hr/>
Paid us by Dan Lamb,	\$3.00

Charlton, December the 12th 1844.

Levi Hammond,	} Fence viewers of Charlton."
Jacob Ward,	

ENGLISH REPORTS

IN LAW AND EQUITY: 

CONTAINING REPORTS OF CASES IN THE

House of Lords, Privy Council, ^{IN}

COURTS OF EQUITY AND COMMON LAW;

AND IN THE

Admiralty and Ecclesiastical Courts;

INCLUDING ALSO

CASES IN BANKRUPTCY AND CROWN CASES RESERVED.

of British Courts
EDITED BY

EDMUND H. BENNETT & CHAUNCEY SMITH, ESQRS.,
COUNSELLORS AT LAW.

VOLUME IV.

Containing Cases in all the Courts of Equity and Common Law, and in the
High Court of Admiralty, during the year 1851.

1851

BOSTON:
CHARLES C. LITTLE AND JAMES BROWN.

1851.

 Embrey & another v. Owen.

 EMBREY & another v. OWEN.¹

Easter Term, April 30, 1851.

Rights to flowing Water, Air, and Light — Irrigation of Land — Appreciable Quantities — Practice.

Flowing water, air, and light are bestowed by Providence for the common benefit of men; and so long as the reasonable use by one man of this common property does not do actual and perceptible damage to the right of another to the similar use of it, no action will lie.

A riparian proprietor has a right to irrigate his land by water from the stream, provided he does not thereby interfere with the rights of the other riparian proprietors; and whether the use made by him of the stream for this purpose be reasonable and permitted, or not, depends on the circumstances of each case.

Where an action on the case, founded on such an irrigation, was brought against a riparian proprietor by another having a mill lower down on the stream, it appearing that the irrigation did not take place continuously, but only at intermittent periods, when the river was full, and that no damage was done thereby to the working of the mill, and that the diminution of the water was not perceptible to the eye:—

Held, that this was a reasonable use of the water by the defendant, for which no action could be maintained.

In that action the defendant pleaded, first, the general issue; and, secondly, that J. J. was possessed of four closes on the bank of the stream above and of the bed of it up to the middle, that the water immemorially flowed over that part of the bed, and that at certain periods of the year, viz., in January, February, and March, when the water was more than sufficient for the use of the mill, the defendant, as the servant of J. J., diverted small and reasonable quantities of the water for the irrigation of those closes, which, excepting such small quantities as were absorbed and used in the irrigation, were returned into the stream above the mill, &c. The plea then averred that the diversion was not continuous, but only intermittent, and that the quantities of water absorbed and lost were very small and unappreciable, and that the diversion caused no damage or impediment to the plaintiff's mill. To this plea the plaintiff replied *de injuria*. At the trial the judge, in directing the jury on this plea, told them that he felt great difficulty in affixing a legal meaning to the term "unappreciable," but suggested that it might mean "so inconsiderable as to be incapable of value or price:" and the defendant obtained a verdict generally. The court inclined to think this interpretation of the word "unappreciable" erroneous, but considering the defendant entitled to succeed on the general issue, refused to set aside the verdict if he would consent to its being entered for the plaintiff on the special plea.

CASE. The first count of the declaration alleged that the plaintiffs were lawfully possessed of certain water grist mills, and of right ought to have had and enjoyed the benefit and advantage of the water of a certain stream or watercourse, which ought to have run and flowed unto the said mills for the supplying the same with water for the working thereof, save and except at such times and on such occasions when it might be reasonable and necessary to irrigate or water certain closes of the defendant situate and being on the southern side of the said stream or watercourse, and near to the same, with reasonable quantities of the water thereof; and assigned as a breach that the defendant, at times when it was not reasonable or necessary to irrigate or water the said closes of the defendant, &c., and for divers different and other purposes than the irrigating or watering the same, wrongfully and injuriously cut, dug, made, and erected, &c., in, upon, and near to the sides and banks of the said

¹ 20 Law J. Rep. (n. s.) Exch. 212. 15 Jur. 633.

Embrey & another v. Owen.

stream, &c., and at a part thereof above the said mills, divers sluices, trenches, channels, aqueducts, and cuts, and kept and continued the same for a long time, &c., and thereby unlawfully and wrongfully diverted and turned divers large quantities of the water of the said stream, &c., out of and away from the said mills, and stopped, prevented, and hindered the water of the said stream, &c., from running or flowing along its usual course to the said mills, and from supplying the same with the necessary water for the working thereof, &c., as the same of right ought to have done and otherwise would have done; and by reason thereof the water of the said stream, &c., sufficient for the supplying of the said mills, could not run or flow to the same, &c.; and the plaintiffs thereby, for want of such sufficient water, could not during that time use their said mills, or follow, use, or exercise their trade or business therein in so large, extensive, and beneficial a manner as they might and otherwise would have done, but were thereby deprived of the use and enjoyment of their mills and of the benefits, profits, gains, and advantages which they otherwise would have made by carrying on their trade and business therein. There were two other counts in the declaration; but the course which the cause took at the trial renders it unnecessary to refer to them. The defendant pleaded in all eighteen pleas, raising various issues, some on the declaration itself, and some on certain new assignments; but the only pleas of importance were the first, fourth, seventh, and tenth, as follows: First, to the whole declaration, not guilty. Fourthly, to the first count, that one John Jones before and at the said several times, &c., was lawfully possessed of divers, to wit, four closes situate and being on the bank of and next adjoining to and extending to the middle of the stream of the said stream and watercourse, to wit, on the north side thereof, and at a part of the said stream or watercourse above the said mills, and which said closes were other than the closes on the southern side of the said stream or watercourse in the said first count mentioned, and part of which said several closes whereof the said John Jones was so possessed as aforesaid, &c., hath from time whereof the memory of man runneth not to the contrary been covered with the water of the said stream or watercourse, which from time whereof, &c., hath been used and accustomed to run and flow in its usual flow, stream, and current over part of and unto and by the said last-mentioned closes, for the watering, fertilization, and general benefit and advantage thereof; that at certain intermittent periods and times during divers months of the year, to wit, the months of January, February, and March, the said periods and times being periods and times when the waters of the said stream or watercourse are most abundant and flow in great quantity and abundance, and are more than sufficient or necessary and flow in greater quantity than can be used for the due and proper working of the said mills, right and proper, and fit, necessary, and requisite to water and irrigate the said first-mentioned closes with the water of the said stream, &c., for the more convenient enjoyment and occupation and substantial improvement and cultivation of the said closes, and for rendering the same fertile and productive and conducive to the public and general

 Embrey & another v. Owen.

weal and advantage; wherefore the defendant at the said several times when, &c., the same being reasonable and proper times in that behalf respectively, and during the said months of January, February, and March, and the waters of the said stream then being most abundant, &c., as the servant of the said John Jones, and by his command, diverted and turned divers small quantities of the water of the said stream, the same being reasonable and fit and proper quantities in that behalf, and not more than was necessary and convenient for the purpose of irrigating and watering the said first-mentioned closes, &c., and then caused the same to flow in, over, and upon the same, and which said quantities of water, save and except such small portions and quantities thereof as were necessarily absorbed and used by and in the passing over the said closes in and by the course of the irrigating and watering thereof as aforesaid, then fell, passed, flowed, and returned into and unto the said stream, &c., at divers parts and places of the same, above the said mills, and before the said stream, &c., reached and arrived at the same; and for the purposes aforesaid the defendant, &c., as the servant of the said John Jones and by his command, cut, dug, made, and erected, &c., in, upon, and near to the sides and banks of the said stream, &c., at a part of the same above the said mills, a certain sluice, trench, channel, or aqueduct, and kept and continued the same, &c., in, upon, and near to the said sides and banks of the said stream, and thereby diverted and turned the said small quantities of the water of the said stream, &c., as she lawfully might for the cause aforesaid; which were the same grievances in the first count mentioned. The plea concluded with this averment: "And the defendant further saith, that the diversion and abstraction aforesaid was not nor is a continuous diversion, but only takes place at intermittent periods and in manner in this plea aforesaid, and that the quantities of water so absorbed and used as aforesaid, and stopped, prevented, and hindered from running and flowing to the said mills, were and are very small and *unappreciable* quantities, and not more or greater than were and are necessary for the purposes in this plea aforesaid, and that the same were and are not required, and had at no time theretofore been appropriated by the plaintiffs for the purpose of working the said mills or any other purposes, and that the diverting, turning away, and abstracting, and stopping, hindering, and preventing the same from flowing to the said mills, did not at any time cause any damage, hinderance, or impediment to the due, proper, and necessary working and using of the said mills." The seventh and tenth pleas were similar to the fourth, and were pleaded respectively to the second and third counts. The plaintiff joined issue on the first plea; and to the fourth, seventh, and tenth, replied *de injuria*. At the trial, before Talfourd, J., it appeared that the plaintiffs were occupiers of a water grist mill, situate on the bank of the River "Rhiew," in the parish of "Berriew," in Montgomeryshire. The defendant, Mrs. Owen, was the owner of land on that river, above the mill; and this action was brought against her for diverting part of the water of the stream for the purpose of irrigating certain meadows on its northern bank, which were in the occupation of her

 Embrey & another v. Owen.

tenant, John Jones. The evidence showed that the defendant did divert the water, by means of a cut and aqueduct, when the river was full, for the purpose of irrigating those meadows, and that there was a loss of a portion of water by absorption and evaporation. The working of the plaintiffs' mill was not however in the least impeded, and the quantity thus lost was differently calculated by the scientific witnesses on both sides, one for the plaintiffs estimating it at four or five per cent.; one for the defendant, at only one seventh per cent., even in summer; but all the witnesses concurred, that there was no sensible diminution of the stream by reason of the diversion, none cognizable by the senses; and that the amount of the loss was ascertainable only by inference from scientific experiments on the absorption and evaporation of water poured out on soil. On the first and fourth issues the judge left two questions to the jury. First, Were the quantities of water absorbed and evaporated in the process of the defendant's irrigation small and *unappreciable* quantities? Secondly, Did the abstraction of water by the defendant cause any sensible diminution of the natural flow of the water of the stream? Both these questions having been answered by the jury in favor of the defendant, the first in the affirmative, and the second in the negative, the judge directed a verdict for the defendant on those issues. On the fourth issue he left the question to the jury in the terms of the plea, i. e., whether the quantities of water lost were small and *unappreciable*; intimating, however, that he felt great difficulty in affixing a legal meaning to this latter term, but suggesting that it might mean "so inconsiderable as to be incapable of *value* or *price*." The defendant obtained the verdict generally, with leave reserved to the plaintiffs to move to enter a verdict on the first, fourth, seventh, and tenth issues.

Welsby, in Michaelmas term, obtained a rule accordingly; and if necessary, to enter judgment for the plaintiffs *non obstante veredicto* on the fourth, seventh, and tenth issues. This rule was argued at the sittings in banc after Hilary term.

Bramwell and *Bevan* showed cause. The plaintiffs seek to maintain this action in virtue of a supposed right in them, as *riparian* proprietors, to have *all* the water of the stream to flow to their mill without any diminution whatever. But the admission of such a principle would be highly injurious to the community, and go far to realize the dogma, "*La propriété, c'est le vol*." Rivers run for the benefit and advantage of all persons through whose lands they flow, and not for the exclusive benefit and advantage of those whose lands lie at their mouths. Every riparian proprietor is entitled to use the stream for all its natural or normal purposes, domestic and agricultural; as for instance, he may drink the water, by himself or his cattle, bathe in the stream, take water for the use of his habitation, &c.; subject, however, to the limitation that he do no injury to the other riparian proprietors who have the same rights in the stream as himself. Thus, he could not justify the setting up a steam engine on

 Embrey & another v. Owen.

the banks of the river which would send all its water away in steam, or the establishing public baths which would consume it in large quantities. The law is thus laid down in 3 Stark. Ev. 1248, 3d ed.: "The right of a land owner to use and apply the water of a stream which runs through the lands of various proprietors depends, partly on the peculiar nature of the subject matter, partly on principles already noticed. The water of a running stream is *publici juris*, which each successive proprietor has a right to use in passing, but which is the property of no one; but if one of such owners appropriates the water by applying it to a particular purpose, he has a right to do so, provided he does not thereby prejudice any other owner in his previous use and appropriation of the water to other purposes." This view is supported by *Mason v. Hill*, 3 B. & Ad. 304; 5 B. & Ad. 1; and *Williams v. Morland*, 2 B. & Cr. 910; 2 Bl. Com. 18. In Com. Dig., "Action upon the case for a nuisance," C, also, it is said that the action for nuisance does not lie "if a man use water in his own land out of a watercourse running through his land to the pond of B, whereby B's pond is not so full; if he does not divert the watercourse;" for which is cited a decision by St. John at Suffolk, A. D. 1657, in *Smart v. Stisted*. A contrary doctrine would lead to great absurdity, for if the right claimed by the plaintiffs really exists, it cannot be dependent on the *size* of the river; so that a person living at the mouth of the Thames, the Severn, or even the Mississippi, would have a right of action against any person living higher up on its banks who used a small portion of its water.

[*Parke, B.* The question whether the right of irrigation is among the natural rights of those who are entitled to use the stream was raised in *Wood v. Waud*, 3 Exch. 748; 13 Jur. 472; but it became unnecessary to decide it.]

That case is distinguishable, for there the act of the defendant alone, independent of the acts of others, would have done actual damage. The law in America on this subject is in accordance with our view; *Blanchard v. Baker*, 8 Greenl. 253; as also is that of Scotland; 2 Hutcheson's Just. Peace, 391. "The Lawyer," by McCallum, Advocate. *The Magistrates of Linlithgow v. Elphinstone*, 3 Kames's Select Decisions, 331. The other side will probably rely on 3 Stark. Ev. 1250, 3d ed., note 7: "In a case before Wood, B., at Carlisle, where the water, having been used for the purpose of irrigation, was afterwards returned into the ordinary channel, the learned judge nonsuited the plaintiff; but as it appeared that by so doing a portion was lost in consequence of absorption and irrigation, the Court of King's Bench, as I am informed, afterwards set aside the nonsuit." The case there referred to, however, is not only an anonymous one and reported *ex relatione*, but it neither mentions the quantity of water absorbed, nor gives any reasons for the judgment.

[*Alderson, B.* There was a case of *Dakin v. Cornish* tried before me at Leeds, in 1845, where water was taken from the River Ayr to work a steam engine. There was an artificial course from the river to a reservoir in the yard of a mill; the water was there mixed with other water obtained from the earth, the whole was then used for the

Embrey & another v. Owen.

steam engine, what remained was transferred into another tube and carried back to the river; and the question was, whether this was an injury to some other mills lower down on the stream. We took much care about the case; and I left it to the jury to say if the same quantity of water continued to run in the river as if none of its water had ever entered the premises of the defendant, as if so he was entitled to their verdict. Master *Bennett* and *Welsby* here stated that that case is not reported, and the reporter has not been able to find it.]

But even supposing the defendant in this case were a mere stranger, entitled to no rights whatever in the stream, it is found as a fact by the jury that the quantity of water diverted from it was so small as to be "unappreciable," and not affecting its natural current in the slightest degree. If this be so, the defendant is entitled to succeed on the general issue, for "*de minimis non curat lex*;" and not guilty means not guilty of taking any injurious quantity. The other side will complain of the judge's explanation of the term "unappreciable," and will contend that for the purposes of this case "appreciable" means that which is appreciable *in se*, without reference to the bulk from whence it is taken. But, according to that argument, the taking a glassful of water from a river would give a right of action. The rights to light, air, and running water are analogous. If a man burns a fire at a mile from the house of another, he must to a certain extent depreciate the air, but no action would lie for this.

Welsby, Foulkes, and C. W. W. Wynn, contra. The principal question in this case goes to the whole of the rule, is of some novelty, and of great importance. Whatever may have been held in former times, it must be taken as an established principle, since the case of *Mason v. Hill*, that the right to flowing water, like the right to light or air, is *publici juris*; so that every riparian proprietor through whose land it passes is entitled by natural right to have the stream flow on in its natural current. And the only exceptions to this are those uninjurious ones introduced by the common law, viz., that every person, whether riparian proprietor or not, may take water for his domestic purposes, or to consume by the mouths of his cattle, provided in so doing he does not alter the natural channel of the stream. Any other interference with it is a disturbance of the right of the riparian proprietor, and consequently the subject of an action, even though no *pecuniary* damage may have ensued; for it is an established principle of law that any disturbance of a *right* is in itself ground for an action, as being *injuria sine damno*. 1 Smith's L. C. 131; 2 Wms. Saund. 114, 6th ed.; 1 Wms. Saund. 346 a, b, note 2. *Ashby v. White*, 2 Ld. Raym. 938. Vin. Ab., "Watercourses," C, pl. 3. *Weller v. Baker*, 2 Wils. 414. *Hobson v. Todd*, 4 T. R. 71. *Pindar v. Wadsworth*, 2 East, 154. *Marzetti v. Williams*, 1 B. & Ad. 415. *Mason v. Hill*. *Bower v. Hill*, 1 Bing. N. C. 549. *Williams v. Mostyn*, 4 M. & W. 145. There is good reason for this; for an unusual interference with the stream by a riparian proprietor, especially by any permanent means, such as a pump, aqueduct, or the like,

 Embrey & another v. Owen.

would, if continued for twenty years, either confer an easement or be evidence of one; and although this would not hold in the case of a stranger on whom no usage could confer such a right, still if one person were allowed to take an inappreciable quantity of water, fifty others might do the same, and thus an appreciable quantity be taken for which no one would be liable.

[*Alderson, B.* Formerly when a question was raised by government with respect to the right of persons to take water from Portsmouth Harbor, Lord Abinger said, "An old woman must not take a bucket of water from that harbor, lest a seventy-four should not float."]

In Bract. lib. 4, fol. 221, a, "Eodem modo imponitur quandoque a jure et nec ab homine nec ab usu, s. ne quis faciat in proprio per quod damnum vel nocumentum eveniat vicino. Nocumentum enim poterit esse justum, et poterit esse injuriosum. Injuriosum, ubi quis fecerit aliquid in suo injustè contrà legem vel contrà constitutionem, prohibitus a jure. Si autem prohiberi a jure non possit ne faciat, licet nocumentum faciat et damnosum, tamen non erit injuriosum, licitum est enim unicuique facere in suo quod damnum injuriosum non eveniat vicino, ut si quis in fundo proprio construat aliquod molendinum, et sectam suam et aliorum vicinorum substrahat vicino, facit vicino damnum et non injuriam: cum a lege vel a constitutione prohibitus non sit ne molendinum habeat vel construat. Item a jure imponitur servitus prædio vicinorum, s. ne quis stagnum suum altiùs tollat per quod tenementum vicini submergatur. Item ne faciat fossam in suo per quam aquam vicini divertat, vel per quod ad alveum suum pristinum reverti non possit in toto vel in parte. Item ne quid faciat in suo, quo minus vicinus suus omninò uti possit servitute impositâ vel concessâ, vel quo minus commodè utatur, loco, tempore, numero vel genere, qualitate vel quantitate. Et non refert utrùm hoc omninò facerit vel quod tantundem valeat." In Gale on Easements, p. 137, ed. 1849, "The right principle to be collected from the authorities appears to be, that continued beneficial enjoyment of a running stream is evidence of the right to have the stream run on its accustomed course; and that no one can interfere with such accustomed course unless justified by an easement to do so." And p. 396, "Although, generally, some injury must have been sustained before redress can be had, yet, if the necessary consequence of what has already been done will be an injury to an easement, it is not a condition precedent to the exercise of the remedy, that actual damage shall have accrued." *Wood v. Waud*, rightly considered, disposes of this question.

The court, in delivering judgment, say, "The fact found by the jury is, that the defendants (whose works have been erected within twenty years, and who have no right, by long enjoyment or grant, so to do) have fouled the water of the natural stream, by pouring in soap suds, wool combers' suds, &c.; but that pollution of the natural stream has done no actual damage to the plaintiffs, because it was already so polluted by similar acts of mill owners above the defendants' mill, and by dyers still farther up the stream, and some sewers

Embrey & another v. Owen.

of the town of Bradford, that the wrongful act of the defendants made no practical difference, that is, that the pollution by the defendants did not make it less applicable to useful purposes than such water was before. We think, notwithstanding, that the plaintiffs have received damage in point of law. They had a right to the natural stream flowing through the land, in its natural state, as an incident to the right to the land on which the watercourse flowed, as will be hereafter more fully stated; and that right continues, except so far as it may have been derogated from by user or by grant to the neighboring land owners. This is a case therefore of an injury to a *right*. The defendants, by continuing the practice for twenty years, might establish the right to the easement of discharging into the stream the foul water from their works. If the dye works and other manufactories, and other sources of pollution above the plaintiffs, should be afterwards discontinued, the plaintiffs, who would otherwise have had, in that case, pure water, would be compellable to submit to this nuisance, which then would do serious damage to them. We think, therefore, that the verdict must be entered for the plaintiffs on every part of not guilty to the first count." The court then proceed to an examination of the *American Cases*, and declare that they consider the law put on its right footing in *Mason v. Hill*. As to foreign nations, although America, being a new country possessed of very large rivers, might be supposed to require a different law in this respect from England, its authorities support our view. This appears from Gale on Easements, 131, 132: "In the courts of the United States, which recognize and profess to be guided by the principle of the English law, this point has received much fuller consideration than in the reported decisions of the English courts. In an elaborate judgment of Mr. Justice Story, this right to have a stream flow on in its accustomed course is laid down to be a right universally incident to the property in the adjoining land; a right which can only be interfered with by the acquisition of an easement; and the ordinary rights of the owners of the adjacent land to the natural flow of the stream are distinguished with great precision from the acquisitions in derogation of the common rights made by an exclusive appropriation of the water. 'Prima facie, *Tyler v. Wilkinson*, 4 Mason, U. S. R. 397, every proprietor on each bank of a river is entitled to the land covered with water, in front of his bank, to the middle thread of the stream; or, as it is commonly expressed, *ad medium filum aquæ*. In virtue of this ownership he has a right to the use of the water flowing over it in its natural current, without diminution or obstruction. But, strictly speaking, he has no property in the water itself, but a simple use of it while it passes along. The consequence of this principle is, that no proprietor has a right to use the water to the prejudice of another. It is wholly immaterial whether the party be a proprietor above or below in the course of the river, the right being common to all the proprietors on the river; no one has a right to diminish the quantity which will, according to the natural current, flow to a proprietor below, or throw it back upon a proprietor above. This is the necessary result of the perfect equality

 Embrey & another v. Owen.

of right among all the proprietors of that which is common to all. The natural stream, existing by the bounty of Providence for the benefit of the land through which it flows, is an incident annexed, by operation of law, to the land itself. When I speak of this common right, I do not mean to be understood as holding the doctrine that there can be no diminution whatsoever, and no obstruction or impediment whatsoever, by a riparian proprietor, in the use of the water as it flows, for that would be to deny any valuable use of it. There may be, and there must be allowed to all, of that which is common, a reasonable use. The true test of the principle and extent of the use is, whether it is to the injury of the other proprietors or not. There may be a diminution in quantity, or a retardation or acceleration of the natural current, indispensable for the general and valuable use of the water, perfectly consistent with the common right. The diminution, retardation, or acceleration, not positively and sensibly injurious, by diminishing the value of the common right, in an implied element in the right of using the stream at all," &c. So in the case already referred to of *Blanchard v. Baker*, the court say, "A mill privilege not yet occupied is valuable for the purposes to which it may be applied. It is a property, which no one can have a legal right to impair or destroy, by diverting from it the natural flow of the stream, upon which its value depends; although it may be impaired by the exercise of certain lawful rights, originating in prior occupancy. If an unlawful diversion is suffered for twenty years, it ripens into a right which cannot be controverted. If the party injured cannot be allowed in the mean time to vindicate his right by action, it would depend upon the will of others whether he should be permitted or not to enjoy that species of property." In the case which has been cited from Kames's *Select Decisions* it is said, "Hence it follows, that no man is entitled to divert the course of a river or any of its branches; which would be depriving others of their right, viz., the use of the water. . . . But what is the middle course that we are at liberty to take? An excellent practical rule is laid down in the Roman law, which is, that we cannot divert from a river any rill or runner that has a perennial course." But at all events, on the finding of the jury, the plaintiffs are entitled to a verdict on the special pleas. The *onus* of proving them lay on the defendant, and she has failed to do so. The true meaning of the word "unappreciable" is, that which is not measurable, not that which is not susceptible of value or price, and all the evidence given at the trial showed that the quantity of water taken from this river was measurable.

During the argument, the cases of *Mellor v. Spateman*, 1 Wms. Saund. 343; *Glynn v. Nichols*, 2 Show. 507; Comb. 43, and *Palms v. Heblethwait*, Skin. 175, were referred to by the bench; and at its close Bramwell directed their attention to Gale on Easements, 132, 133, and 333-335.

Cur. adv. vult.

The judgment of the court, consisting of Parke, Alderson, Platt, and Martin, BB., was now delivered by

Embrey & another v. Owen.

PARKE, B., (after fully stating the pleadings and facts.) We are not prepared to say that the learned judge at *nisi prius* was correct in his interpretation of the word "unappreciable" when connected with the word "quantity," nor sure that he was not; for the word "unappreciable" or "inappreciable" is one of a new coinage, not to be found in Johnson's Dictionary, or Richardson's. The word "appreciate" first appears, in our dictionaries, in the last edition of Johnson by Todd, 1827, with the explanation "to estimate," "to value," and assuming that to be the true meaning, which we suppose it is, the compound adjective signifies that the quantities were not capable of being *estimated* or *valued*, and in that sense the fourth plea was not proved. It is, however, a matter of little importance, for assuming that the word was wrongly explained, the only consequence would be that a question would arise, whether the fourth issue and the others involving the same terms ought not to have been found for the plaintiffs, a question we need not decide; for if the issue on not guilty remains as it now is, found for the defendant, as we think it ought to be, there should be no new trial if the defendant consents, as she probably will, that the fourth and other corresponding issues should be found for the plaintiffs. This course was adopted in *Stead v. Anderson*, 4 C. B. 836; 11 Jur. 877.

The important question is that which arises on the plea of not guilty, the jury having found that no sensible diminution of the actual flow of the stream to the plaintiffs' mill was caused by the abstraction of the water. That the working of the mill was not in the least impeded was clear on the evidence. On that finding we think the verdict was properly ordered to be entered for the defendant.

It was very ably argued before us by the learned counsel for the plaintiffs, that the plaintiffs had a *right* to the full flow of the water in its natural course and abundance, as an incident to their property in the land through which it flowed; and that any abstraction of the water, however inconsiderable, by another riparian proprietor, and though productive of no actual damage, would be actionable because it was an injury *to a right*, and if continued would be the foundation of a claim of adverse right in that proprietor.

We by no means dispute the truth of this proposition with respect to every description of right. Actual perceptible damage is not indispensable as the foundation of an action; it is sufficient to show the violation of a right, in which case the law will presume damage — *injuria sine damno* is actionable — as was laid down in the case of *Ashby v. White*, 2 Ld. Raym. 938, by Lord Holt and many subsequent cases; which are all referred to, and the truth of the proposition powerfully enforced, in a very able judgment of the late Mr. Justice Story, in 3 Sumn. Rep. 189, *Webb v. The Portland Manufacturing Company*. But in applying this admitted rule to the case of rights to running water, and the analogous cases of rights to air and light, it must be considered what the nature of those rights is, and what is a violation of them.

The law as to flowing water is now put on its right footing, by a

 Embrey & another v. Owen.

series of cases — beginning with that of *Wright v. Howard*, 1 Sim. & S. 190; followed by *Mason v. Hill*, 3 B. & Ad. 304; 5 B. & Ad. 1, and ending with that of *Wood v. Waud*, 3 Exch. 748; 13 Jur. 472; and is fully settled in the American courts. See 3 Kent's Comm. Lect. 52, 439-445.

The right to have the stream to flow in its natural state without diminution or alteration is an incident to the property in the land through which it passes; but flowing water is *publici juris*, not in the sense that it is a *bonum vacans* to which the first occupant may acquire an exclusive right, but that it is public and common in this sense only, that all may reasonably use it who have a right of access to it, that none can have any property in the water itself, except in the particular portion which he may choose to abstract from the stream and take into his possession, and that during the time of his possession only. See 5 B. & Ad. 24. But each proprietor of the adjacent land has the right to the usufruct of the stream which flows through it.

This right to the benefit and advantage of the water flowing past his land is not an absolute and exclusive right to the flow of *all* the water in its natural state; if it were, the argument of the learned counsel, that every abstraction of it would give a cause of action, would be irrefragable; but it is a right only to the flow of the water, and the enjoyment of it subject to the similar rights of all the proprietors of the banks on each side to the reasonable enjoyment of the same gift of Providence.

It is only therefore for an unreasonable and unauthorized use of this common benefit that an action will lie; for such a use it will; even, as the case above cited from the American Reports shows, though there may be no *actual* damage to the plaintiff. In the part of Kent's Commentaries to which we have referred, the law on this subject is most perspicuously stated, and it will be of advantage to cite it at length: "Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run, (*currere solent*,) without diminution or alteration. No proprietor has a right to use the water, to the prejudice of other proprietors, above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment. He has no property in the water itself, but a simple usufruct while it passes along. 'Aqua currit et debet currere' is the language of the law. Though he may use the water while it runs over his land, he cannot unreasonably detain it, or give it another direction, and he must return it to its ordinary channel when it leaves his estate. Without the consent of the adjoining proprietors, he cannot divert or diminish the quantity of water which would otherwise descend to the proprietors below, nor throw the water back upon the proprietors above, without a grant or an uninterrupted enjoyment of twenty years, which is evidence of it. This is the clear and settled general doctrine on the subject, and all the difficulty that arises consists in the application. The owner must so use and apply the water as to work no material injury or annoyance to his neighbor

Embrey & another v. Owen.

below him, who has an equal right to the subsequent use of the same water. Streams of water are intended for the use and comfort of man; and it would be unreasonable, and contrary to the universal sense of mankind, to debar every riparian proprietor from the application of the water to domestic, agricultural, and manufacturing purposes, provided the use of it be made under the limitations which have been mentioned; and there will, no doubt, inevitably be, in the exercise of a perfect right to the use of the water, some evaporation and decrease of it, and some variation in the weight and velocity of the current. But *de minimis non curat lex*, and a right of action by the proprietor below would not necessarily flow from such consequences, but would depend upon the nature and extent of the complaint or injury, and the manner of using the water. All that the law requires of the party by or over whose land a stream passes, is, that he should use the water in a reasonable manner, and so as not to destroy, or render useless, or materially diminish, or affect the application of the water by the proprietors below on the stream. He must not shut the gates of his dams and detain the water unreasonably, or let it off in unusual quantities, to the annoyance of his neighbor. Pothier lays down the law very strictly, that the owner of the upper stream must not raise the water by dams, so as to make it fall with more abundance and rapidity than it would naturally do, and injure the proprietor below. But this rule must not be construed literally, for that would be to deny all valuable use of the water to the riparian proprietors. It must be subjected to the qualifications which have been mentioned, otherwise rivers and streams of water would become utterly useless, either for manufacturing or agricultural purposes. The just and equitable principle is given in the Roman law: 'Sic enim debere quem meliorem agrum suum facere, ne vicini deteriorem faciat.'

In America, as may be inferred from this extract, and as is stated in the judgment of the Court of Exchequer in *Wood v. Waul*, a very liberal use of the stream for the purposes of irrigation and for carrying on manufactures is permitted. So in France, where every one may use it "en bon pere de famille, et pour son plus grand avantage." (Code Civil, art. 640, note *a*, by Paillet.¹) He may make trenches to conduct the water to irrigate his land, if he returns it with no other loss than that which irrigation caused. In the above-cited case of *Wood v. Waul*, it was observed that in England it is not clear that a user to that extent would be permitted, nor do we mean to lay down that it would in every case be deemed a lawful enjoyment of the water, if it was again returned into the river with no other diminution than that which was caused by the absorption and evaporation attendant on the irrigation of the lands of the adjoining proprietor.

This must depend upon the circumstances of each case. On the one hand it could not be permitted that the owner of a tract of many thousand acres of porous soil, abutting on one part on the stream, could be permitted to irrigate them continually by canals and drains,

¹ See his *Manuel de Droit Français*. Paris, 1833.

 Embrey & another v. Owen.

and so cause a serious diminution of the quantity of water, though there was no other loss to the natural stream than that arising from the necessary absorption and evaporation of the water employed for that purpose; on the other hand, one's common sense would be shocked by supposing that a riparian owner could not dip a watering pot into the stream in order to water his garden, or allow his family or his cattle to drink it. It is entirely a question of degree, and it is very difficult, indeed impossible, to define precisely the limits which separate the reasonable and permitted use of the stream from its wrongful application; but there is often no difficulty in deciding whether a particular case falls within the permitted limits or not, and in this we think, that as the irrigation took place, not continuously, but only at intermittent periods, when the river was full and no damage was done thereby to the working of the mill, and the diminution of the water was not perceptible to the eye, it was such a reasonable use of the water as not to be prohibited by law. If so, it was no infringement of the plaintiff's right at all; it was only the exercise of an equal right which the defendant's employer had to the usufruct of the stream.

We are therefore of opinion that there has been no injury in fact or law in this case, and consequently that the verdict for the defendant ought not to be disturbed.

The same law will be found to be applicable to the corresponding rights to air and light. These also are bestowed by Providence for the common benefit of men, and so long as the reasonable use by one man of this common property does not do actual and perceptible damage to the right of another to the similar use of it, no action will lie. A man cannot occupy a dwelling and consume fuel in it for domestic purposes, without its in some degree impairing the natural purity of the air; he cannot erect a building, or plant a tree, near the house of another, without in some degree diminishing the quantity of light he enjoys; but such small interruptions give no right of action; for they are necessary incidents to the common enjoyment by all.

Rule discharged, the defendant consenting that the verdict on the fourth, seventh, and tenth issues be entered for the plaintiffs.

Boosey v. Jefferys.

IN THE EXCHEQUER CHAMBER.

[ERROR FROM THE COURT OF EXCHEQUER.]

[Coram LORD CAMPBELL, C. J., PATTESON, MAULE, WIGHTMAN, CRESSWELL, ERLE, and WILLIAMS, JJ.]

BOOSEY v. JEFFERYS.¹

Easter Vacation, May 17 and 20, 1851.

Copyright — Right of a Foreigner to, in this Country.

A foreign author residing abroad, who composes a work abroad, and sends it to this country, where it is first published under his authority, acquires a copyright therein; and a British subject, to whom such work is assigned by the foreign author, also gains such right.

Boosey v. Purday, 4 Exch. 145, overruled.

An assignment of copyright, if valid according to the law of the country where it is made, is valid here.

B. composed an opera in Milan, and assigned it there, according to the law of Milan, to one R., who assigned it in England, according to the English law, to the plaintiff, who published it in this country before any publication abroad:—

Held, that the plaintiff might maintain an action for the infringement of the copyright of such work.

Thus was a writ of error brought upon a bill of exceptions which had been tendered to the ruling of Rolfe, B., under the following circumstances: The action was in case, and the declaration stated, that at the time of the committing of the grievance the plaintiff was, and from thence has been and is, the proprietor of the copyright in certain books, being musical compositions — ten airs in the opera of “*La Sonnambula*” of Bellini — which said several books had each of them been first printed and published in England, and which had each of them been first published within twenty-eight years then last past, and which said copyright was subsisting at the time of the committing of the grievance; yet the defendant, not being the proprietor of the said copyright, heretofore, after the passing of the 5 & 6 Vict. c. 45, and within twelve calendar months before the commencement of the suit, unlawfully, &c. The pleas were: first, that the plaintiff was not the proprietor of the copyright; and, secondly, that there was not at the time when, &c., a subsisting copyright in the said compositions. Issue was joined upon these pleas; and at the trial the following facts appeared: Bellini, a foreigner, composed the opera of “*La Sonnambula*” in 1831, when it was performed with much success at the Carcano Theatre at Milan. In February, 1831, a Signor Ricordi purchased the opera of Bellini and the managers of the theatre, under an instrument which, according to the law of Austria, was sufficient to transfer the copyright, but there was not any attesting witness to it. On the 9th of June, 1831, Ricordi assigned the opera by deed to the plaintiff, who caused ten of the airs in it to be entered at Stationers’ Hall, and copies were also deposited at the British Museum. On the 13th of May, 1844, the plaintiff also pro-

COMMENTARIES
ON
AMERICAN LAW.

BY JAMES KENT.

VOLUME II.

EIGHTH EDITION.

NEW-YORK:
PUBLISHED BY WILLIAM KENT,
AND SOLD BY THE PRINCIPAL LAW BOOKSELLERS THROUGHOUT
THE UNITED STATES.

—
M DCCC LIV.

law, that the property is so altered as to change the title.^a In the civil law there was much discussion and controversy on the question, how far a change of the form
 *364 *and character of the materials would change the title to the property, and transfer it from the original owner of the materials to the person who had effected the change. If A. should make wine out of the grapes, or meal out of the corn of B., or make cloth out of the wool of B., or a bench, or a chest, or a ship, out of the timber of B., the most satisfactory decision, according to the Institutes of Justinian, is,^b that if the species can be reduced to its former rude materials, the owner of the materials is to be deemed the owner of the new species; but if the species cannot be so reduced, as neither wine nor flour can be reduced back to grapes or corn, then the manufacturer is deemed to be the owner, and he is only to make satisfaction to the former proprietor for the materials which he had so converted.^c (1)

With respect to the case of a *confusion* of goods, where those of two persons are so intermixed that they can no longer be distinguished, each of them has an equal interest in the subject as tenants in common, if the intermixture was by consent. But if it was wilfully made without mutual consent, then the civil law gave the whole to him who made the intermixture, and compelled him to make satisfaction in damages to the other party for what he had lost.^d The common law

^a *Bro. tit. Property*, pl. 23.

^b *Inst.* 2. 1. 25.

^c The commentators have been much divided in opinion concerning the solidity of these distinctions taken by Justinian. Vinus and Pothier have approved of the rule established in the Institutes; while Valin and Basnage lay down the doctrine, that the thing must be restored, if there be clear evidence of its identity, even though the form be changed, as corn into flour, or skins into leather. Mr. Bell has referred to the several writers by whom this subject is discussed; and though he condemns the rule of Justinian as too subtle, he gives us no distinct principle as a substitute. 1 *Bell's Com.* 276. n. See the *Civil Code of Louisiana*, art. 512 to 524, which has incorporated the principle or most material distinctions in the French law.

^d *Inst.* 2. 1. 26. 28.

(1) See *post*, p. 525, (299.) note (1.) The right of property by accession may occur when materials, belonging to several persons, are united by labour into one article. The ownership of the article is in the party to whom the principal part of the materials belonged. *Pulcher v. Page*, 52 *Matur*, 194.

gave the entire property, without any account, to him whose property was originally invaded, and its distinct character destroyed.^a (1) If A. will wilfully intermix his corn *or hay with that of B., or casts his gold into another's *365 crucible, so that it becomes impossible to distinguish what belonged to A. from what belonged to B., the whole belongs to B.^b But this rule is carried no farther than necessity requires; and if the goods can be easily distinguished and separated, as articles of furniture, for instance, then no change of property takes place.^c So, if the corn or flour mixed together were of equal value, then the injured party takes his given quantity, and not the whole. This is Lord Eldon's construction of the cases in the old law.^d But if the articles were of different value or quality, and the original value not to be distinguished, the party injured takes the whole. It is for the guilty party of the fraud to distinguish his own property satisfactorily, or lose it. No court of justice is bound to make the discrimination for him.^e (2)

III. *Of original acquisition by intellectual labour.*

Another instance of property acquired by one's own act and power is that of literary property, consisting of maps, charts, writings and books; and of mechanical inventions, consisting of useful machines or discoveries, produced by the joint result of intellectual and manual labour. As long as these are kept within the possession of the author, he has the same right to the exclusive enjoyment of them as of any other species of personal property; for they have proprietary

^a *Popham's Rep.* 38. pl. 2.

^b *Popham's Rep. ub. sup.* *Ward v. Eyre*, 2 *Bulst.* 323.

^c *Colwill v. Reeves*, 2 *Campbell's N. P. Rep.* 575. *Holbrook v. Hyde*, 1 *Vermont Rep.* 286.

^d 15 *Ves.* 442.

^e *Hart v. Ten Eyck*, 2 *Jolons. Ch. Rep.* 108. Sir William Scott, in the case of the *Olin*, 1 *Rob. Rep.* 208. *Brackenbridge v. Holland*, 2 *Blackford's Ind. Rep.* 377.

(1) *Willard v. Rice*, 11 *Met. R.* 493. See, also, *Pratt v. Bryant*, 29 *Vermont R.* 333. It is said, in this last case, that if the intermingling is a consequence of *negligence only*, the goods are not lost.

(2) See *Hesseltine v. Stockwell*, 29 *Maine R.* 237. *Bryant v. Ware*, *id.* 205. *Dillingham v. Smith*, *id.* 370.

marks, and are a distinguishable property. But when they are circulated abroad, and published with the author's consent, they become common property, and subject to the free use of the community. It has been found necessary, however, for the promotion of the useful arts, and the encouragement of learning, that ingenious men should *be stimulated to the most active exertion of the pow- *366
 ers of genius, in the production of works useful to the country and instructive to mankind, by the hope of profit, as well as by the love of fame or a sense of duty. It is just that they should enjoy the pecuniary profits resulting from mental as well as bodily labour. We have, accordingly, in imitation of the English and foreign jurisprudence, secured by law to authors and inventors, for a limited time, the right to the exclusive use and profit of their productions and discoveries. The jurisdiction of this subject is vested in the government of the United States, by that part of the constitution which declares^a that congress shall have power "to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." This power was very properly confided to congress, for the states could not separately make effectual provision for the case.

(1.) *As to patent rights for inventions.*

A patent, according to the definition of Mr. Philips,^b is a grant by the state of the exclusive privilege of making, using and vending, and authorizing others to make, use and vend, an invention.

The first act of congress on this subject was passed April 10th, 1790, and it authorized the secretary of state, the secretary of war, and the attorney-general, or any two of them, to grant patents for such new inventions and discoveries as they should deem sufficiently useful and important. That act extended equally to aliens, and the board exercised the power of refusing patents for want of novelty or utility. This act

^a Art. 1. sec. 8.

^b *The Law of Patents for Inventions*, p. 2. In 1847 was published, at London, Hindmarch's "Treatise on the Law relating to Patent Privileges for the sole use of Inventions."

was repealed, and a new act passed on the 21st February, 1793. It confined patents to the citizens of the United States, and they were to be granted by the secretary of state, subject to the revision of the attorney-general. The act gave no power to the secretary of state to refuse a patent for want of novelty or usefulness, and the granting of the patent became a mere ministerial duty. The privilege of suing out a patent was, by the act of 17th April, 1800, extended to aliens, of two years' residence in the United States. The act of July 13th, 1832, only required the alien to be a resident at the time of the application, and to have declared his intention, according to law, to become a citizen.

But as every person was entitled to take out a patent, on complying with the prescribed terms, without any material injury, at least at the patent office, respecting the usefulness and importance of the invention or improvement, a great many worthless and fraudulent patents were issued, and the value of the privilege was degraded, and in a great degree destroyed.^a It became necessary to give a new organization to the patent office, and to elevate its character, and confer upon it more efficient power. This was done by the act of congress of July 4th, 1836, ch. 357, which repealed all former laws on the subject, and re-enacted the patent system with essential improvements.

A patent office is now attached to the department of state, and a commissioner of patents appointed. Applications for patents are to be made in writing to the commissioner, by any person having discovered or invented any new and useful art, machine, manufacture,^b or composition of matter, or any new

^a It was stated, in an able report made by a committee of the Senate of the U. S., on the 28th April, 1836, (and who introduced a new bill on the subject,) that the whole number of patents issued at the patent office, under the laws of the United States, up to March 31st, 1836, amounted to 9,731, being more than double the number issued either in England or France during that period.

^b The English statute of James I. was confined to the word *manufacture*, and that, said Lord Ch. J. Abbott, in the case of the King v. Wheeler, (2 B. & Ald. 349,) has been generally understood to denote, either a thing made which is useful for its own sake, and vendible as such, as a medicine, a stove, a telescope; or to mean an engine or instrument, or some part thereof to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking-frame, or a steam-engine for raising waters from mines. The French law

and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his discovery or invention thereof, and not at the time of his application for a patent in public use or on sale, with his consent or allowance, as the inventor or discoverer.^a The applicant must deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using and compounding the same, in full, clear and exact terms, avoiding unnecessary prolixity, so as to enable any person skilled in the art or science to which it appertains, or is most nearly connected, to make, construct, compound and use the same; and he must, in the case of a machine, fully explain the principle and the application of it, by which it may be distinguished from other inventions; and he must particularly specify the part, improvement or combination, which he claims as his own invention or discovery.^b He must accompany *the same with draw-

extends to every invention or discovery, and in any kind of industry; and yet the practical construction of the English, French and American law, in regard to the kinds of inventions that are patentable, is substantially the same.

^a By the English law, if the invention had been already made public in England by a description contained in a work, whether written or printed, which had been publicly circulated, the patentee is not the first and true inventor, whether he borrowed his invention from such publication or not. The question will be, whether, upon the whole evidence, there has been such a publication as to make the description a part of the public stock of information. If a single copy of a work had been kept in a depository in a state of obscurity, the inference would be different. *Stead v. Williams*, 7 *Mann. & Granger*, 818. S. C. 8 *Scott N. C.* 681. *Househill Co. v. Neilson*, 1 *Wels.* 718. The public use of an invention, so as to prevent it from being new, means a use *in public*, so as to come to the knowledge of others than the inventor. *Carpenter v. Smith*, 9 *Meeson & Welsby*, 299, and in making a machine for a patent, if a workman hints improvements which are adopted, it will not destroy the patent in the hands of the employer. *Allen v. Rawson*, 1 *Comm. Bench R.* 551.

^b The *principle* of a machine, in reference to the patent law, means the *modus operandi*, or that which applies, modifies or combines mechanical powers to produce a certain result, and so far a principle, if new in its application to a useful purpose, may be patentable. *Story, J.*, in *Barrett v. Hall*, 1 *Mason*, 470. *Woodcock v. Parker*, 1 *Gallison*, 438. *Whittemore v. Cutter*, *ib.* 478. *Earl v. Sayer*, 4 *Mason*, 1. *Lowell v. Lewis*, 1 *Mason*, 187. *Buller, J.*, in *Boulton v. Bull*, 2 *H. Blacks.* 456. 495. *Smith v. Pearce*, 2 *McLean's Rep.* 176. A new composition of known materials, or a new combination of existing machinery producing a new and useful result, may be patentable. *Boville v. Moore*, *Dav. Pat. Cases*, 361. *Story, J.*, in *Moody v. Fiske*, 2 *Mason*, 112. *Lord Eldon*, in *Hill v. Thompson*, 3 *Merivale*, 629, 630. *Thompson, J.*, in *Reynolds v. Sheldon*, *C. C. U. S. for Connecticut*, September, 1838.

ings and written references, where the nature of the case admits of drawings or specimens of ingredients, and of the composition of matter sufficient in quantity for the purpose of experiment, where the invention or discovery is of a composition of matter. He must likewise furnish a model of his invention, in cases which admit of representation by model. The applicant also must make oath or affirmation that he believes he is the original and first inventor or discoverer of the art, machine, composition or improvement for which he solicits a patent, and that he does not know or believe that the same was ever before known or used, and he must further state of what country he is a citizen.

On filing the application, description and specification, the commissioner of patents is to examine the alleged new invention or discovery, and if it appears to him that the applicant was not the original and first inventor or discoverer thereof; or that any part of what he claims as such, had before been invented or discovered, or patented, or described in any printed publication in this or any foreign country; or that the description is defective and insufficient, he is to notify the same to the applicant, so as to enable him to remove the objections, if he be able. But if the same does not so appear to the secretary, and it had not been previously in public use, or on sale with the applicant's consent, and he shall deem the same to be sufficiently useful and important, he is then to issue a patent in the name of the United States to the applicant, his heirs, executors, administrators or assigns, for the exclusive right of making, using and vending the same for a term not exceeding fourteen years. The patent may, in special cases, and in the discretion of the board of commissioners, be renewed and extended to the further term of seven years. If the application be rejected, and the applicant persists in his claim, he is to make his oath or affirmation anew; and if the specification and claim be not so modified as to remove the objection, the applicant may appeal to a board of three examiners, to be appointed by the secretary of state, and the commissioner of patents is to be governed by their decision.

If the applicant be a citizen, or an alien of one year's residence, he is to pay to the treasury of the United States \$30; and if a British subject, \$500; and all other applicants, \$300.

and received, if he have any remedy at all, for rents paid during the six months to the legal owner in possession.

BURNETT, J., after stating the facts, delivered the opinion of the Court—MURRAY, C. J., and TERRY, J., concurring.

The only question presented, regards the construction of the two hundred and thirty-sixth section of the Practice Act. In the case of *Middleton v. Guy*, this Court decided, that the purchaser could not obtain possession of the premises from the judgment-debtor, until the expiration of the time allowed for a redemption. There is nothing in that decision, however, that affects the present case.

That the purchaser is entitled to the rents from the sale, is not disputed, but it is insisted—First, that his remedy is against the judgment-debtor; and—Second, that conceding the tenant may be sued by the purchaser, no suit can be brought until the time for redemption expires.

As to the question, whether the words “tenant-in-possession,” would include the judgment-debtor, in a case where he has possession at the time of sale, so as to make him responsible for use and occupation, it is unnecessary to determine. But we think it clear, that Lathrop was responsible to the plaintiff for the rents, in the way he would have been to the judgment-debtor had no sale have been made, and that, consequently, the plaintiff could sue for the rent, as often as it fell due, under the terms of lease existing when he became purchaser. The effect of the sale was equivalent to an assignment of the lease for the time.

The judgment of the District Court is therefore reversed, and that Court will enter judgment for the plaintiff, in accordance with this opinion.

HOFFMAN *et al.* v. STONE *et al.*

A ditch company, who avail themselves of a dry ravine to conduct their water a portion of the distance to their dam, where they use it, do not abandon the water thus carried by them, and are entitled to the same enjoyment of it as if conducted through an artificial ditch.

The natural water in such ravine belongs to the first appropriator thereof, and for either a diversion or appropriation thereof, an action will lie.

APPEAL from the District Court of the Eleventh Judicial District, County of El Dorado.

This was an action brought by the owners of a ditch, (which received its supply of water from Dutch Creek, or Ravine, near its mouth,) in El Dorado county, for the purpose of procuring a perpetual injunction against the defendants, restraining them

Hoffman v. Stone.

from diverting or appropriating the waters of the said ravine, and also for the recovery of a small judgment against them, by way of damages. The defence was that Dutch Ravine was usually a dry creek, affording no natural water during the summer months, and that the defendants, in order to connect two of their canals, had precipitated the water from the upper one into the creek, and taken the same out again, by means of a dam, into their lower ditch, and that they had not interfered with the natural water of said ravine. The case was tried by a jury, who found a special verdict, on which the Court granted a perpetual injunction against the defendants, restraining them from diverting water from the main channel of Dutch Creek, so as to prevent the same from flowing down said creek to the extent of the capacity of plaintiffs' ditch. Defendants appealed.

Sanderson & Hewes for Appellants.

The defendants diverted no more water from said Dutch Creek than they turned into it from their canal.

Dutch Creek is merely a torrent, and affords natural water only during the rainy season, and in quantities varying with the amount of rain which falls.

A party who appropriates water for mining purposes acquires greater rights therein than are recognized by the common law in riparian proprietors; that is, the right which ditch companies acquire in their water is something more than a mere use, and approaches nearer to an absolute ownership. See *Irwin v. Phillips*, Jan. T., 1855; *Gill v. Newman*, Oct. T., 1855.

He acquires and possesses all the characteristics of ownership; he can divert, change and control at pleasure its course; may sell or refuse to sell it; in short, he may exercise every act of ownership over it which its nature and character will permit.

Abandonment is the result of act coupled with intention, and when used in a legal sense, means a voluntary parting with property, or rights, without the intention of resuming or reclaiming them.

It is difficult to perceive in what manner the plaintiffs have been injured by the acts of the defendants. They have been deprived of no water to which they had ever, at any time, acquired any right.

To say that they have a right to have the waters of Pilot and Rock Creeks flow down the channel of Dutch Creek to their works, is to say they have the right to avail themselves of the fruits of the capital and labor of the defendants, without compensation, and against their will and consent—a doctrine too monstrous and absurd to be sanctioned by judicial authority.

Newell & Williams for Respondents.

Hoffman v. Stone.

In *Eddy v. Simpson*, we understand the facts to be substantially these :

That the plaintiffs had erected a dam across Shady Creek, and thereby diverted the waters of the same into a ditch constructed by them; and afterwards defendants, through their ditches, brought the waters of Grizzly Cañon and Bloody Run to Cherokee Corral, in the vicinity of Shady Creek, and sold it to miners; that after being used by the miners, said water, through natural channels, etc., found its way into Shady Creek, above plaintiffs' dam, defendants claiming to have never abandoned it; that defendants, for the purpose, (as they said,) of reclaiming or taking up the same water, or same quantity which they had turned into, or permitted to run into Shady Creek, constructed the dam complained of.

The defence, in the case just quoted, was substantially the same urged in the case before us.

When a party, who is in the use of certain water, permits the same to escape from the possession, and enter a natural stream, where it does, or may mingle with the waters of said stream, he abandons the same, whether intending reclaiming it or not, and so far as the water is concerned which has so passed into the natural stream, he places himself upon an equality with all others having a right to appropriate the same by building other dams and ditches, unless, by so doing, he interferes with the vested rights of some one below him.

We maintain two propositions, upon which we submit the merits of this case, to wit :

1. That when appellants permitted the water which had been in their ditches to escape into Dutch Creek, they lost all right thereto, and all control of the same.

2. That the respondents, being the first to appropriate the water of Dutch Creek, are entitled to the undisturbed use of the same, to the extent of the capacity of their ditch, regardless of the source from whence it came.

MURRAY, C. J., delivered the opinion of the Court—BURNETT, J., concurring.

The former decisions of this Court, in cases involving the right of parties to appropriate waters for mining and other purposes, have been based upon the wants of the community and the peculiar condition of things in this state, (for which there is no precedent,) rather than any absolute rule of law governing such cases.

The absence of legislation on this subject, has devolved on the Courts the necessity of framing rules for the protection of this great interest, and in determining these questions, we have conformed, as nearly as possible, to the analogies of the common law.

Hoffman v. Stone.

The fact early manifested itself, that the mines could not be successfully worked without a proprietorship in waters, and it was recognized and maintained. To protect those who, by their energy, industry, and capital, had constructed canals and races, carrying water for miles into parts of the country which must have otherwise remained unfruitful and undeveloped, it was held that the first appropriator acquired a special property in the waters thus appropriated, and as a necessary consequence of such property, might invoke all legal remedies for its enjoyment or defence. A party appropriating water, has the sole and exclusive right to use the same for the purposes for which it was appropriated, and so long as he is not obstructed in the use thereof, he has no ground of action.

In the case before us, it is shown that Dutch Gulch was a mere torrent, dry at certain seasons of the year; that it was used by the defendants, as a part of their ditch, for conducting water from another stream down to their dam; that, in point of fact, the water so brought to Dutch Gulch, and turned in there by defendants, was not abandoned by them, but was turned in for the purpose of being conveyed to their dam, from whence it was afterwards diverted and sold by them; that there was, at the time of the commencement of this suit, no natural water flowing in the bed of the stream, and that all the waters so diverted by the defendants were artificial, or waters conducted there by them.

The plaintiffs being the prior locators, it would follow that any interference with the waters of Dutch Gulch would be an infringement of their rights. But the appropriation of the waters did not give them the exclusive use of the bed of the stream. We see no reason why it might not be used by others, as a channel for conducting water, so long as it did not interfere with their rights. If the defendants were diverting the natural water of the stream, as well as that brought into it by themselves, then the plaintiff would have a just cause of complaint.

It would be a harsh rule, however, to require those engaged in these enterprises to construct an actual ditch along the whole route through which the waters were carried, and to refuse them the economy that nature occasionally afforded in the shape of a dry ravine, gulch, or cañon. It is contended, however, that this case falls within the rule of *Eddy et al. v. Simpson et al.*, 3 Cal. Rep.; and *Kelly & Co., v. Natoma Water Company*, Jan. T., 1856. We do not think so. The verdict of the jury finds, that the water was not abandoned by the defendants, and left to find its way by natural channels into Dutch Gulch, but was turned in by the defendants making the gulch a connecting link of their ditch.

Under all the circumstances of the case, we do not see how the plaintiff is entitled to relief. It may very possibly happen, that at certain seasons of the year, the defendants' dam will obstruct the water running in the natural channel of the stream which,

Phelps v. Peabody.

of right, belongs to the plaintiffs, and in that event, they would have their action. But at the date of the commencement of this suit, no such state of facts is shown to exist, and the plaintiffs are not entitled to any relief.

Judgment reversed.

PHELPS v. PEABODY *et al.*

Courts of Equity will only interfere to enjoin a judgment at law, rendered against a party by reason of fraud or accident, unmixed with any fault or negligence of himself or his agents.

Trials before a referee are conducted in the same manner as before Courts; and exceptions must be taken to the rulings of the referee, in the progress of the trial, in the same manner as they must be taken before a Court; and such exceptions must be embodied in the report of the referee, or made part thereof by his proper certificate.

Where a party failed to obtain the proper certificate of the referee, relying on the verbal assurance of the attorney on the other side, that he would agree to a statement, such party cannot be considered free from fault and negligence, and he is not in a position to invoke the aid of a Court of Equity to enjoin a judgment obtained against him.

Where a verdict has been obtained at law against a defendant, and he has neglected to apply for a new trial within the time appointed by the proper Court of law, Courts of Equity will not entertain a bill for an injunction on the ground that the original demand was unconscientious.

APPEAL from the District Court of the Seventh Judicial District, County of Solano.

The plaintiff filed his bill, praying for an injunction restraining all proceedings upon a judgment obtained against him by the defendant Peabody, and for other equitable relief.

The bill sets forth that the case, in which the judgment was obtained, was tried before a referee, who, as it alleges, committed divers errors in the trial thereof. The bill alleges, that in consequence of a verbal agreement with the opposite counsel to agree to a statement for a motion to set aside the referee's report, and for a new trial, the present plaintiff, in that suit defendant, neglected to obtain from the referee a proper certified statement, containing the errors and exceptions made and taken on the trial before the referee, until too late to entitle him to make his motion; by reason whereof judgment was entered against him, and his motion for a new trial, etc., was overruled; and that, having no statement, he is remediless by appeal or otherwise at law. The bill charges that the verbal agreement, above mentioned, was made with the fraudulent intent of inducing him to allow the period allowed for his motion to elapse, etc.

The defendant demurred to the bill. The Court sustained the demurrer, and entered judgment accordingly.

Plaintiff appealed.

Butte Canal and Ditch Co. v. Vaughn.

THE BUTTE CANAL AND DITCH COMPANY v. VAUGHN.

Where water from an artificial ditch is turned into a natural water course, and mingled with natural waters of the stream, for the purpose of conducting it to another point to be there used, it is not thereby abandoned, but may be taken out and used by the party thus conducting it, so that he do not, in so doing, diminish the quantity of the natural waters of the stream, to the injury of those who have previously appropriated such natural waters.

The burden of proof devolves on the party thus mingling the water belonging to him with that appropriated by others. He can only claim such quantity to which he establishes his right by decisive proof. The enforcement of his right must leave the opposite party in the use of the full quantity to which he was originally entitled.

The first appropriator of the water of a stream passing through the public lands in the State has the right to insist that the water shall be subject to his use and enjoyment to the extent of his original appropriation, and that its quality shall not be impaired so as to defeat the purposes of its appropriation. To this extent his rights go, and no further. In subordination to those rights, subsequent appropriators may make such use of the channel of the stream as they think proper, and they may mingle its waters with other waters, and divert an equal quantity, as often as they choose.

APPEAL from the District Court of the Fifth Judicial District, County of Amador.

This was an action for the diversion of the waters of the South fork of Jackson creek in the County of Amador. Plaintiffs claimed under the first appropriator of the waters of said stream. Defendant in his answer set up a right to a portion of the water, by virtue of a contract with the owners of the Amador County canal, which drained the North fork of the Mokelumne river. From this canal, the water claimed by defendant was emptied into a natural ravine, and from thence flowed into the South fork of Jackson creek, above the dam of plaintiffs, and after descending the stream for a mile, was again taken up at a point above plaintiffs' dam and diverted through defendant's ditch to his mining ground. Plaintiffs demurred to this portion of the defendant's answer as *new matter*. The demurrer was sustained by the Court below, and the defendant appealed. The material facts sufficiently appear in the opinion of the Court.

W. W. Cope for Appellant.

This case in its material features is precisely similar to that of *Hoffman et al. v. Stone et al.*, 7 Cal. R. 46. There is no question as to

the fact of priority ; but the appellants, who were the defendants in the Court below, contend that they had the right to divert from said stream a quantity of water equal to that turned in for their use from the "Amador County canal." The ditch of the defendants was constructed in pursuance of a contract with the owner of that canal for a supply of water, and the channel of said stream was *adopted* and *used* as a *connecting link* between the two, and as a *medium* for the conveyance of water from one to the other. The water turned into said stream was derived from a foreign source ; it was turned in subsequent to the construction of the ditch of the defendants, and for the sole purpose of supplying that ditch. It was not *abandoned*, nor was the *possession* of it *lost* even for a moment.

The principal difference between this case and that of Hoffman *et al.* v. Stone *et al.*, consists in the fact that the water in this case, when turned into the creek, mingled with other water flowing therein, to the use of which the plaintiffs had the prior right. But the decision in that case indicates very clearly the immateriality of this difference. It settles a point of considerable importance in this case, that a mere prior right to the use of the water of a stream, does not entitle the party having such right to the exclusive use of the channel of the stream. A reasonable use may be made of such channel by any other person, and it would seem to follow, that *any use* must be regarded as reasonable from which no *actual damage* results to the prior appropriator.

If that case was correctly decided, the judgment in this must be reversed, or if affirmed, must be affirmed upon grounds purely technical. The only question is as to the effect upon the respective rights of the parties of the *mingling* of these separate bodies of water, by the voluntary act of the defendants. It is true, the identity of the water turned into the creek was destroyed by the *mingling* of such water with the natural water of the stream. But does it therefore follow, the whole was subjected to the prior rights of the plaintiffs? In the case of a *confusion* of goods, where one person willfully and without consent mixes his goods with those of another, so that they cannot be distinguished, the law gives the entire property to the injured party. But this is a rule of necessity, and is carried no farther

Butte Canal and Ditch Co. v. Vaughn.

than necessity requires. If the goods mixed are of the same kind, and of equal value, each party takes his given quantity, and neither is entitled to the whole. 2 Kent's Com. 437 ; 15 Ves. 442.

The attention of the Court is particularly requested to the case in 15 Vesey. The rule there stated appears to me to be peculiarly applicable to a case like the present.

Eddy v. Simpson, 3 Cal. R. 249, and Kelley v. Natoma Water Co., 6 Cal. R. 105, are not authorities in this case. The decision in both of these cases proceeded upon the ground of *abandonment* alone, whereas in this case no such question exists or can arise.

The decision in Hoffman *et al.* v. Stone *et al.* is confidently relied upon by the appellants as governing this case.

Robinson, Beatty & Heacock for Respondents.

The plaintiffs claim that all the water in South Jackson creek belonged to them, as first appropriators; that if any one negligently or willfully mingled other water with their water, they (plaintiffs) were entitled to the whole. The plaintiffs rely, with confidence, on the case of Eddy v. Simpson, 3 Cal. R. 249, to sustain the judgment of the Court below. The case of Kelley v. Natoma Water Co., 6 Cal. R. 185, is to the same effect. The latter case, however, has other facts mixed up with it, and other principles discussed, and among other things the doctrine of "relation." The case of Eddy v. Simpson has but one proposition in it, and we will examine that case, and endeavor to show that it does not in any one particular differ from the case now under discussion. We will further endeavor to show that that case is founded on the soundest principles of law, and ought to be sustained.

Appellants contend that this case differs from Eddy's case, in this particular—that in Eddy's case the water escaped, and flowed first into plaintiff's creek, and after it had flowed into the creek, defendants erected their dam to take it out; whereas, in this case, defendants erected their dam and ditch to take out the water before they had turned it in.

Now, the time at which the ditch was dug to take out the water, in either case, could make no difference, unless the question of abandon-

ment had arisen; it might then have thrown some light on the intention of the parties. The digging of the ditch beforehand would clearly show that the party thus digging the ditch did not intend to abandon the water he was turning in above. If then, the case of *Eddy v. Simpson* turned on the question of technical intentional abandonment, and it was on that ground that the Court sustained the action in that case, we admit that our authority is not in point. But if it turned on any other point than technical voluntary abandonment, then we think the case of *Eddy v. Simpson* is directly to the point. The difference of facts in the two cases could not upon any other principle be material.

How do the appellants in this case come to the conclusion that the case of *Eddy v. Simpson* was decided on the doctrine of abandonment? Neither the word abandon nor abandonment, nor in fact, any word of similar import is used, either by this Court in their opinion, nor by either of the counsel in their briefs, nor by the Judge of the Court below in his instructions.

The Court decides one doctrine clearly; that is, that the use of water is only usufructory; that the defendants having suffered the water to escape from where they used it, and to mingle with water where plaintiffs were using it, it all became subject to the use of plaintiffs.

In this case, say the appellants, we did not suffer our water to escape, but we intentionally turned it into plaintiffs' water. They contend that having turned the water in willfully, they have greater rights than if it had escaped without their consent. In the case where the water had *escaped*, why could not the party who originally appropriated it take it up again, after its escape? Undoubtedly not; because it had, after its escape, mingled with the water of another, and they could not separate it. There is no law which hinders a man from pursuing the property which has escaped from him. If he has only a usufructory interest, still he may pursue, to enjoy that interest. In the case of *Eddy v. Simpson*, no one will deny that, after the water which was brought to Cherokee Corral, by the defendants, and there used by them, had escaped from them, they might have pursued that same water, erected dams and reservoirs, and taken it up again, at

any point before it mingled with water used by another. They might have retaken it anywhere on the flats, and in the natural dry ravines, before it mingled with the water of Shady Creek. They did not lose the water then, irrevocably, by letting it escape. After an ordinary escape they had the right of recapture, or new appropriation. But they had lost it by letting it mingle with water appropriated by another. The reason is, the law will not attempt to make impracticable divisions. If one voluntarily mixes his property with that of another, ordinarily he loses the whole. And this rule is enforced with more rigor against the person who voluntarily and willfully makes the confusion, than against one who does it accidentally or negligently. See Kent's Com. 365, margin, 437, 8th edition, note 1.

But in either case a division is refused, on the ground that it would be impracticable to tell what portion belongs to each of the parties, and the one who is faultless will not be subjected to a division in which, from the uncertainty of human testimony, and the impossibility of Courts doing exact justice, he might suffer a loss. If he is not in fault, he will not be subjected to any risk. The doctrine upon the subject of confusion of goods is well settled: that he who willfully mixes his goods with those of another loses the whole, except in the single instance where goods mixed are of the same quality, and are capable of being measured by some just standard, as wheat by the bushel, flour by the pound, wine by the gallon, etc., and in such cases, if the quantity mixed can be ascertained, then the wrong-doer may have his wheat, wine, or flour restored to him by measure, because it can make no difference to the innocent party whether he has the same identical grains of wheat, or drops of wine, which he originally had, provided he has the same quantity and quality. But the very moment it becomes impossible to make a decision, and do the innocent party certain justice—when the division can only be guessed at, or any injury has resulted to the innocent party from the admixture, then the wrong-doer forfeits the whole. We refer to the following authorities on this head: 2 Kent's Com. 365; Willard v. Rice, 11 Metcalf; Breckinridge v. Holland, 2 Blackford's Ind. R. 377.

In regard to the application of this rule to the use of the water, we think that we can show that it applies with more force than to any other class of property.

In the first place, running water is incapable of accurate admeasurement; at least, no accurate means of admeasurement are in use among miners. It is true, they do measure by the square inch; but then a square-inch tube, with one foot head, would only carry half as much water as the same tube with four feet head, and one-third as much as with nine feet head, etc., that is, in proportion to the square root of the height.

But the difficulty of admeasurement is the smallest of the objections attending such confusion of water. If one party, after having conducted his water for some distance through artificial channels, and used it for mining purposes, turns it into a natural stream which has been appropriated by another, he of course empties mud and sediment with the water, and thereby injures the quality of the water in the natural stream. The quantity added would not, as a general rule, more than compensate for the depreciation of the quality.

Another difficulty is this: suppose water be turned into a creek at its head, which will fill a certain orifice, with a certain pressure; it runs down the creek say five or ten miles; now, how are you to measure it when it is taken out? During that five or ten miles, of course, there is a great loss by evaporation, leakage, sinking into the sand, etc. If you measure at the taking out in the same way as when it was let in, you make the innocent party, who first appropriated the creek, sustain all the loss of the wrong-doer. If you allow a per centage for loss, what will it be? The loss would be much greater in some cases than in others. Running over a gravelly bottom, in some cases, the loss would be fifty or seventy-five per cent., perhaps, in five miles. In other cases, with a narrow, shaded channel, and a compact rock bottom, the loss would not be ten per cent. in ten miles. But there is still another and greater difficulty, practically, than all we have yet mentioned. All men who have dug ditches from small creeks, have been in the habit of using their dams, at the head of the ditch, to accumulate water during the night, to be used during the day. Usually, these dams have filled up during the night. If, after the water is turned in, the dam soon fills up and runs over, much water is wasted during the night. Both parties commence using water out of the dam, or reservoir, in the morning, and it is soon emptied. All these

things would make the equitable division of the water so difficult, that it would be impossible for the most equitable and right-minded persons to make a satisfactory division.

It was suggested, on the argument of this cause, that the doctrine of confusion of goods did not apply to this case, because plaintiffs did not own the water, and only had a usufructory right in it. Well, that is a *special* property. They had a right to it, with all the rights pertaining to property, so long as it was in their possession. They have the same right to protection, so long as the water is being used by them, that they would have in the use of property absolutely belonging to them. The injury is done to them before they have parted with the water. For the time being, they are the *quasi* owners. To show that the doctrine of confusion applies not only to the case of absolute property, but also to cases where there is only a qualified property, we refer to the case of *Willard v. Rice et al.*, 11 Metcalf's Mass. Rep. 493.

The case in *15 Vesey*, to which appellants refer, fully carries out the doctrine for which we contend in regard to confusion of goods.

FIELD, J., delivered the opinion of the Court—TERRY, C. J., and BALDWIN, J., concurring.

The plaintiffs claim, under the first appropriators, the right to the waters of the South fork of Jackson creek, in the County of Amador, and previous to and at the time of the diversion by the defendants, which is the occasion of this suit, were the owners of a line of ditch and of flumes and aqueducts, into which, by means of a dam constructed across the stream, they diverted the waters from the natural channel of the fork, and conducted the same to adjacent mining ground to be used for mining purposes.

The defendants are the owners and in possession of valuable mining ground situated on the north side of the fork, and are endeavoring to obtain the requisite supply of water for its successful working from the North fork of the Mokelumne river and its tributaries, through the Amador County canal, under a contract with the owners of the canal. For that purpose the water is conducted from the canal by artificial channels to a natural gulch or ravine, from which it is emp

Butte Canal and Ditch Co. v. Vaughn.

tied into the South fork of Jackson creek, above the dam of the plaintiffs. About a mile below the point where the water is thus emptied, the defendants have constructed a ditch leading to their mining ground, into which, by means of a dam at its head thrown across the fork, they divert a portion of the waters flowing in the channel, and it is this diversion which is the subject of complaint in this suit. The quantity of water diverted does not equal the quantity emptied into the fork from the Amador County canal through the ravine or gulch designated. Upon these facts the single question is presented whether the defendants, after the mingling of the water conducted by them from the canal with the waters naturally flowing in the fork, possess the right to take out an equal or less quantity from the stream, or is the right of the defendants to the use of the water whilst in the ravine, or to the use of an equal quantity, lost by its subsequent mingling with the natural waters of the fork?

This case is similar in its material features to that of *Hoffman et al. v. Stone et al.* (7 Cal. 46). In that case the plaintiffs were the prior appropriators, and as such entitled to the waters of a stream called Dutch gulch, the channel of which was dry at certain seasons of the year. This channel the defendants used as a connecting link between two canals constructed by them, emptying their waters by one canal into the channel, and subsequently diverting them by means of a dam into the other. The plaintiffs in that case, who were the owners of a ditch which received its supply of water from the creek, obtained a judgment perpetually enjoining the defendants from diverting the water from the main channel so as to prevent it from flowing down to the extent of the capacity of their ditch. But on appeal the judgment was reversed, and this Court, per Murray, C. J., said:

“The plaintiffs being the prior locators, it would follow that any interference with the waters of Dutch gulch would be an infraction of their rights. But the appropriation of the waters did not give them the exclusive use of the bed of the stream. We see no reason why it might not be used by others as a channel for conducting water, so long as it did not interfere with their rights. If the defendants were diverting the natural water of the stream, as well as that brought into it by themselves, then the plaintiff would have a just cause of complaint.”

Butte Canal and Ditch Co. v. Vaughn.

In the case at the bar the channel of the South fork of Jackson creek is used as a connecting link between the Amador County canal and the ditch of the defendants. The water from the canal is emptied into the fork with no intention of abandoning its use, but for the sole purpose of supplying the ditch. The principal difference between this case and that of *Hoffman v. Stone*, is the mingling of the water introduced by the defendants with the waters of the creek. In that case the channel of the stream was dry in certain seasons of the year, and at the time the suit was brought there was no natural water flowing in it. But it does not appear that this circumstance had any controlling influence upon the decision. The point settled in that case is this: that the prior right to the use of the natural water of a stream does not entitle the owner of such a right to the exclusive use of the channel. So long as his right is not interfered with, there is no reason why the bed of the stream may not be used by others as a channel for conducting water. If the plaintiffs in the present case receive their full supply, as previous to the introduction of water by the defendants, they have no cause of complaint.

It does not necessarily follow that the water introduced by the defendants became subject to the use of the plaintiffs, because its identity was lost by being mingled with the water naturally flowing in the creek. The rights of the parties, after such mingling, are not unlike the rights of the owners of goods of equal value after their mixture—both are entitled to take their given quantity. Where there is a confusion of goods willfully made by one owner, without the consent of the other, so that it becomes impossible to distinguish what belongs to each, the common law gives the entire property to the injured party. "But this rule," says Kent, "is carried no further than necessity requires; and if the goods can be easily distinguished and separated, as articles of furniture, for instance, then no change of property takes place. So, if the corn or flour mixed together *were of equal value, then the injured party takes his given quantity and not the whole.*" (Coms., 2d vol., 365; *Lupton v. White*, 15 Vesey, 442.)

The plaintiffs rely, with apparent confidence, upon the case of *Eddy v. Simpson* (3 Cal. 249). In that case the plaintiffs were the prior appropriators of the water of Shady creek, having diverted the same

Butte Canal and Ditch Co. v. Vaughn.

by a dam across the stream. The defendants, by like means, obtained the water of Bloody Run and Grizzly cañon, which they brought to a place known as Cherokee corral, where, after its use, it passed from their possession and found its way, by natural channels and the natural level of the country, to Shady creek, at a point above the dam of the plaintiffs. And when the defendants undertook to retake from Shady creek, a quantity of water equal to that which thus found its way into the channel, the Court held their rights to the water were gone. "When the water of Grizzly cañon and Bloody Run," said the Court, "left the possession of the defendants at Cherokee Corral, all right to and interest in that water was lost by the defendants. It might be made the property of whomsoever chose to possess it. Without the agency of the defendants, it found its way into Shady creek, joining the waters there in the possession of the plaintiffs, and became a part of the body of water used and possessed by them."

It is very evident that the Court considered the fact that the water had passed from the possession of the defendants, and found its way to Shady creek without their agency, as material circumstances of the case; in other words, it regarded the water as having been abandoned. This is the view taken by Mr. Chief Justice Murray, when he notices the objection that *Hoffman v. Stone* was within the rule of that case; for the reason he assigns, as an answer to the objection, is the finding of the jury that the water was not abandoned by the defendants, and left to find its way by natural channels into Dutch gulch, but was turned in by the defendants, making the gulch a connecting link of their ditch.

There may be some difficulty in cases like the present, in determining with exactness the quantity of water which parties are entitled to divert. Similar difficulty exists in the case of a mixture of wheat and corn—the quantity to be taken by each owner must be a matter of evidence. The Courts do not, however, refuse the consideration of such subjects, because of the complicated and embarrassing character of the questions to which they give rise. If exact justice cannot be obtained, an approximation to it must be sought, care being taken that no injury is done to the innocent party. The burden of proof rests with the party causing the mixture. He must show clearly to what

portion he is entitled. He can claim only such portion as is established by decisive proof. The enforcement of his right must leave the opposite party in the use of the full quantity to which he was originally entitled.

Cases involving questions of analogous character and equal difficulty, are of frequent occurrence. The illustration given by the defendants' counsel is in point. A constructs a ditch, and appropriates a portion of the water of some stream for mining purposes; B subsequently constructs a ditch for a similar purpose, tapping the stream. A then enlarges his ditch, destroying the landmarks of its original capacity. A dispute then arises between A and B, as to whether A is not diverting more water through his enlarged ditch, than he is entitled to by virtue of his first appropriation. Here the quantity of water to which A and B are respectively entitled, becomes difficult of accurate adjustment; and if, instead of two, there be a greater number of ditches taking water from the same stream, questions respecting the conflicting rights of the parties become exceedingly complicated and embarrassing. The Courts do not, however, as we have observed, refuse to entertain such questions; but endeavor to relieve them of their complication and embarrassment, and to mete out justice to all parties. (*Priest v. Union Canal Company*, 6 Cal. 107, and *White v. Todd's Valley Water Company*, 8 Cal. 443.) In *Embrey et al. v. Owen*, (4 Eng. Law and Equity, 470) Baron Alderson refers to a case in point. "There was a case," says the Baron, "of *Dakin v. Cornish*, tried before me at Leeds, in 1845, where water was taken from the river Ayr to work a steam engine. There was an artificial course from the river to a reservoir in the yard of a mill; the water was there mixed with other water obtained from the earth, the whole was then used for the steam engine, what remained was transferred into another tube and carried back to the river; and the question was whether this was an injury to some other mills lower down on the stream. We took much care about the case, and I left it to the jury to say if the same quantity of water continued to run in the river, as if none of its water had ever entered the premises of the defendant, and if so, he was entitled to their verdict."

The first appropriator of the water of a stream passing through the

Butte Canal and Ditch Co. v. Vaughn.

public lands in this State, has the right to insist that the water shall be subject to his use and enjoyment to the extent of his original appropriation, and that its quality shall not be impaired so as to defeat the purpose of its appropriation. To this extent his rights go, and no further. In subordination to these rights, subsequent appropriators may make such use of the channel of the stream as they think proper, and they may mingle with its waters other waters, and divert an equal quantity, as often as they choose. Whilst resting in the perfect enjoyment of their original rights, the first appropriators have no cause of complaint.

It follows that the Court below erred in sustaining the demurrer to the new matter set up in the answer, and the judgment rendered thereon must be reversed, and the cause remanded for further proceedings. Ordered accordingly.

CLARK v. McELVY *et als.*

A bill of sale for a mining claim, not under seal, and without warranty, which only purports to convey to the vendee the right, title and interest of the vendor, will not pass the title, although the vendor is in possession at the time, if such possession is without title. Such a bill only passes an equity, which is subject to the legal title or any superior equity.

In such a case, the purchaser takes the risk of any infirmities or defects of title which may exist. The doctrine of *caveat emptor* applies to all such cases.

APPEAL from the District Court of the Fourteenth Judicial District, County of Nevada.

Ejectment to recover a mining claim.

The case was tried before a jury, who, under the instruction of the Court, returned a verdict for the plaintiff. It seems that one Matteson, in 1853, was possessed of a certain piece of mining ground, and in consideration of a note made by one Head and one Flippen, with one Grier as surety, in July of the same year, executed and delivered a bill of sale of the ground to Head and Flippen, jointly. Evidence was offered, in the course of the trial, tending to show, if credited,

Opinion of the Court—Sawyer, J.

further appeared that Taylor was thereupon pardoned by the Governor. Who knows that Driscoll's statements are not false? At all events, they are no evidence against Wells, Fargo & Co., and it is necessary, in order to charge them, that the fact be proved that Driscoll was the robber, as well as the fact, that he was convicted of the robbery. As Taylor had been convicted, and Wells, Fargo & Co., after being satisfied that he was the robber, had paid over the promised reward before the detection and arrest of Driscoll, it may be a question whether the offer of the reward was still open to other parties who might choose to pursue the matter further. If so, when would Wells, Fargo & Co.'s liability cease, after having once offered a reward? But this question has not been argued, and it is unnecessary to determine the question now.

The judgment and order denying a new trial must be reversed and a new trial had; and it is so ordered.

69,167

O. P. RICHARDSON v. JULIUS KIER.

DAMAGE FROM DITCHES.—Where K. owned a ditch which passed over the land of R., he was bound to so use it as not to injure R.'s land, and this irrespective of the question as to which had the older right or title; and if, through any fault or neglect of K., in not properly managing and keeping his ditch in repair, the water overflowed or broke through the banks, and destroyed or damaged the land of R., by either washing away the soil or covering it with sand, K. was liable for such injury.

IDEM—RAVINE ADOPTED AS PART OF DITCH.—A ditch owner may only adopt a ravine, which is also a natural watercourse, as part of his line of ditch, to the extent of the capacity of his ditch to convey water. If an injury result from an overflow of the water of such ravine, not occasioned by its use as part of such ditch, the ditch owner will not be responsible therefor.

NEGLIGENCE.—"Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. It is not absolute or intrinsic, but is always relative to some circumstances of time, place, or person."

LIABILITY FOR DAMAGE DONE BY WATER DISCHARGED OR SOLD FROM DITCH.—Where K. discharged water from his ditch above R.'s land in such place that it naturally would, and did, flow over and upon and injure R.'s land, K. is respon-

Statement of Facts.

sible for such injury ; nor can K. shield himself from this responsibility because he may have sold this water at such place to miners, by whom it was used for mining purposes before, in the course of its flow, it reached R.'s land and occasioned such injury.

IDEM.—In such case, the fact that the miners so using the water contributed to and enhanced the injury sustained, and are joint tortfeasors with K., will not relieve K. from his liability or affect its measure.

APPEAL from the District Court, Fourteenth Judicial District, Placer County.

This was an action to recover damages sustained by plaintiff by the flooding with water, and the covering with sand and sediment, of his lands, situated on Coon Creek, in Placer County, to which he claimed the title in fee, from the defendant's ditches, and for an injunction.

The acts complained of were thus stated in the complaint, to wit :

“ Plaintiff further avers, that the defendant is the owner of certain water ditches leading from Coon Creek, called the Independent Ditch and the North Sea Ditch ; said ditches sometimes called the Whisky Diggings Ditches. Said ditches are extended by defendant out of the said Coon Creek several miles above plaintiff's said land, and are used by defendant to divert the natural waters of Coon Creek, and also the waters of several ravines emptying into said ditches, over and through plaintiff's said lands, and discharge said waters so conveyed into Coon Creek within plaintiff's land before described. Said waters, but for said ditch, would not flow upon plaintiff's said lands, and would not do any damage to said lands.

“ Plaintiff further avers, that defendant could easily carry said waters in said ditches without any injury to plaintiff's said lands ; that the same, if confined in proper banks and levees, and if said ditches were kept properly cleaned out, would pass over said lands without injury to the same. Plaintiff further avers, that defendant has heretofore, to wit : before the wrongs and injuries complained of, promised,

Statement of Facts.

agreed, and bound himself, to build and keep up proper banks and levees along said ditches, and to keep said ditches cleaned out. And plaintiff further avers, that it is the duty of the defendant in conducting said waters over plaintiff's said lands so to confine them that they would not flow over or upon the lands of plaintiff, other than on the beds of said ditches.

“ Plaintiff further avers, that the defendant, not regarding his duty to keep up the banks and levees, and to keep said ditches cleaned out, has not kept said banks or levees up, nor has he kept said ditches cleaned out, but has wholly neglected and refused so to do. Plaintiff further avers, that the defendant, since the 1st day of November, 1864, and on divers other days since that time, and continuously since that time up to the present time, has caused the said waters flowing in said ditches to flow over and upon said lands of plaintiff, and to convey upon them large deposits of sand, earth, and gravel, and he has by said means covered up and destroyed a large portion of said lands, to wit: about twelve acres of said lands, with said earth and gravel, so as to materially injure and damage it and wholly destroy a portion of the same, and the crops growing thereon, and render the said lands wholly valueless for any purpose. Plaintiff further avers, that all of said damage is occasioned and caused by the willful and negligent acts of defendant, by neglecting and refusing to keep in repair the banks and levees on said ditches, and by willfully and wrongfully flowing the said waters in said ditches while the same were filled up, and the banks and levees thereof wholly neglected and not in proper repair. Said acts of defendant are willful, malicious, and neglectful, and are done by defendant with full knowledge and intent to damage plaintiff and do the damage aforesaid.

“ Plaintiff avers, that by the acts of defendant aforesaid, and by the overflow and covering up of the lands as aforesaid, he has already suffered damage in the sum of one thousand dollars. Plaintiff further avers, that if said acts of

Statement of Facts.

the defendant are continued, that it will wholly destroy the lands lying on the bottom on the easterly side of said Coon Creek, and said damage will be irreparable.

“Plaintiff further avers, that the defendant threatens that he will, and plaintiff avers that he will, continue said acts of damage and injury to plaintiff, unless restrained by the order of this Court.

“These premises considered, plaintiff sues and asks for a judgment against defendant for the damages aforesaid, to wit: said sum of one thousand dollars. Plaintiff further prays for an order forever restraining and enjoining the defendant from the further commission of the acts aforesaid,” etc.

The answer denied all the material averments of the complaint, except the possession by plaintiff of the land to which he claimed title, and the ownership and use by defendant of the ditches described, in the complaint, except as to “the North Sea Ditch,” in respect to which the answer denied that for two years before suit the defendant had used it to convey the waters of Coon Creek, or any other waters, or for any purpose. The answer further denied that the ditches of the defendant pass over or through, or conduct water over or through plaintiff’s land, or any part thereof. The answer then averred as follows :

“Defendant further answering avers that the Independent Ditch, mentioned in complaint, was excavated in 1853, and starts out of the creek called Dry Creek, at a point about ten miles easterly of the land described in the complaint, and passes over public lands of the United States to a mining district called Whisky Diggings, lying about two miles easterly from the land described as plaintiff’s in the complaint, and is about sixteen miles in length, and of the capacity to carry about one hundred and twenty inches of water; that defendant, and those whose title he has acquired, have continuously since said ditch was excavated used the same for

Statement of Facts.

the purpose of selling water to miners during the wet season, and that there has been no water flowing in the same during the dry season.

“Defendant further answering avers that the country through which said ditch passes is mineral land containing gold, and is, and during all of said time has been public land of the United States, and that at said diggings miners have been engaged in digging for gold, and the only use plaintiff has made of said water is to sell the same at the ditch to miners, who purchased the water at the ditch from plaintiff, and conveyed the same to their own claims, and there used it as they saw fit.

“Defendant further avers that he has always kept said ditch in good repair, and since November 1st, 1865, has not run his ditch more than half full of water from Dry Creek, and that the only times when the ditch would be full of water would be when there was a heavy fall of water, and the rain water from the hill sides and ravines would fill the same.

“Defendant further answering avers that the lands described as plaintiff’s in the complaint, lie about two miles from defendant’s ditch at its nearest point, and that the country easterly of said land is the public land of the United States, and abounds in gold, and defendant has only been engaged in diverting and selling water to miners on the public lands.”

The cause was tried before the Court and a jury. On the trial the plaintiff introduced in evidence a patent from the State of California to L. R. and T. L. Chamberlain of the lands described in his complaint, dated March 21st, 1863; also, a deed dated July 11th, 1864, from the said Chamberlains to plaintiff, of the same lands; also, a deed dated May 12th, 1864, from John and Kate Ziegenbein to the defendant, of the ditches described in the complaint. He also introduced in evidence, under the objection of the defendant on the ground of irrelevancy, and under the defendant’s

Statement of Facts.

exception to its admission, the following article of agreement, to wit :

“ Article of agreement made this, the 19th day of March, 1863, between John Ziegenbein, of the first part, and T. L. and L. R. Chamberlain, of the second part, witnesseth : That whereas, a suit is now pending in the District Court of the Eleventh Judicial District, in the County of Placer, wherein said Ziegenbein is plaintiff and said T. L. and L. R. Chamberlain *et als.* are defendants, to enjoin the Surveyor General and Register of the State Land Office from issuing a patent to said T. L. and L. R. Chamberlain for certain tracts of land specified in the complaint in said action ; and whereas, said parties have agreed to settle and adjust the matters in controversy in said action, and other matters of controversy between them ; and whereas, the said Ziegenbein is the owner of two certain water ditches in the County of Placer, known as the ‘ Independent ’ and ‘ North Sea ’ Ditches, which flow over and through certain lands owned and claimed by said T. L. and L. R. Chamberlain. Now, the said T. L. and L. R. Chamberlain hereby agree to execute to said Ziegenbein a good and sufficient deed of conveyance, for a tract of land of about three acres in extent, which shall include the house, store, barn, and other improvements occupied by said Ziegenbein, upon a tract of land claimed by said T. L. and L. R. Chamberlain, the exact description of which the parties are unable to give, but which is to be correctly described in the deed to be thus executed, said deed to be executed within a reasonable time.

“ And it is further agreed by and between said parties, that the said T. L. and L. R. Chamberlain shall, and they do, hereby release the said John Ziegenbein from all damages, claim, or liability to them, or either of them, for or by reason of or caused by the flow of water and tailings from said ditches, or either of them, over any and all tract and tracts of land owned or claimed by said T. L. and L. R. Chamberlain, or either of them, or in which they or either

Statement of Facts.

of them have any right, title, claim, or interest whatever, and also hereby release the said Ziegenbein and his sureties, Thomas Fairchild and S. W. McConaha, from all liability, claim, or damage upon the injunction bond executed by said sureties and filed by said Ziegenbein in said action, in said Placer District Court, and they also hereby release the said Ziegenbein from all claim or liability for any damage or injury which may be caused by the flow of water and tailings from said ditches, as they now run over any and all lands owned or claimed by said T. L. and L. R. Chamberlain, or either of them, or in which they or either of them have any interest, from this date up to the first day of July, A. D. 1863, after which time no water shall flow in any of said ditches, except as hereinafter provided, and after this date no water shall be sold upon any of the inclosed lands of the said T. L. and L. R. Chamberlain.

“The said T. L. and L. R. Chamberlain hereby further grant, sell, and convey to the said Ziegenbein, his heirs and assigns forever, the right and privilege of flowing the water and tailings from the said ditches, and from the mining and other claims in which said water may be used, over and through the tract of land described in said complaint filed in said cause, and described as the Southeast Quarter of Section Number Fourteen. It being understood that said ditch is to run where it now runs through said quarter, and in no other course or direction, nor upon any other than its present bed; and the said Ziegenbein is to keep the ditch and its levees and banks in good repair and order until it reaches Coon Creek, and he is to be responsible for no damage which it or its waters may do after it reaches Coon Creek.

“And the said John Ziegenbein hereby agrees, in consideration of the premises, to dismiss the said action, each party to pay his own costs.

Statement of Facts.

“In testimony of all which, we have each of us hereto set our hands and seals this date above written.

“JOHN ZIEGENBEIN. [SEAL.]

“THOS. L. CHAMBERLAIN.” [SEAL.]

The following were part of the instructions of the Court to the jury, given at the request of the defendant, under the exceptions of the plaintiff, to wit:

“1. The proofs, before plaintiff can recover damages, must prove to your satisfaction that he has sustained damages by the act of the defendant.

“2. If defendant sold water at his ditch to the quartz mill company and parted with his right to the water at his ditch, and the quartz mill company took the water at the ditch and used it afterwards as they pleased, defendant is not liable for damages plaintiff may have sustained, if any, from the use of the water by the quartz mill company.

“3. If the jury find as a fact that the defendant's ditch is on the public mineral lands, and that when defendant made sales of the water from his ditch to miners or others, he sold the water at the ditch and merely measured it to the purchaser at the ditch, and the purchaser took it from the ditch and conveyed it by one of his own ditches to the place where he wished to use it, and used it as he pleased for mining, then the defendant is not liable for any damage that might result to plaintiff from the use of the water by the miner.

“4. If the jury find as a fact that the miners who used the water from defendant's ditch, were at work on the public mineral lands about two miles from plaintiff's land, and that the water after leaving the claims of the miners flowed down a ravine which was a natural outlet, down to plaintiff's land, then defendant is not liable for the damage, if any, plaintiff may have sustained by the use of the water by the miners.

“5. The plaintiff avers in his complaint that the defend-

Argument for Appellant.

ant is the owner of two ditches, called the Independent Ditch and the North Sea Ditch; and avers, also, that the defendant by these ditches takes the water out of Coon Creek several miles above his land, and causes the same to flow on to plaintiff's land, and to convey thereon earth, sand and gravel. Plaintiff, if he recovers at all, can only recover damage for such injury as he has sustained by the act of defendant in washing sediment on to plaintiff's land by the water taken out of Coon Creek, and the ravines on the line of the ditches, through the Independent and North Sea Ditches.

“6. If the defendant, in the use and management of his ditch, has used ordinary care and prudence, and has not been guilty of negligence, he is not liable for damages which may have resulted from the water of his ditch flowing off from the public lands, when they had been used for mining, and running on to plaintiff's land, carrying sand and earth there.”

The verdict and judgment were for the defendant, and the plaintiff moved for a new trial, on the grounds, to wit: first, the insufficiency of the evidence to justify the verdict; and, second, errors in law occurring at the trial, and excepted to by the plaintiff. The motion was denied, and the plaintiff appealed from the order denying said motion and from said judgment.

Jo Hamilton, for Appellant.

Defendant's first instruction given is not law. The jury are instructed that the damage must be occasioned by the act of the defendant as contradistinguished from his *omission*. It was not the act of the defendant that we complain of. It was his refusal and failure to act; *i. e.*, his wanton negligence, carelessness, and omissions that caused the damage, and not acts done by him. (*Hoffman v. T. W. Co.*, 10 Cal. 416; *Wolf v. St. Louis Ind. Co.*, 10 Cal. 344; *Turner v. Tuolumne Water Co.*, 25 Cal. 403; and other cases cited.)

Argument for Respondent.

Defendant's third instruction given is not law. If, when defendant sold the water to miners, he parted with it, and never afterwards acquired it, I deny that he would not then be liable for the results which would necessarily follow, and which would be known to him when selling them.

Defendant's fourth instruction given is not law. The ravine was as much a part of defendant's ditch as any other part of it, and if defendant took up the water, in its changed condition, from use in the mines, and appropriated it by his ditch, or by the ravine as part of his ditch, then he would be liable for the damage wrought by it.

Defendant's sixth instruction given is not law. The instruction wholly ignores plaintiff's prior possession, which runs back through his ancestors to 1850, while the ditch only dates to 1855 or 1856. We were in a condition, as first locator, to invoke the rule, *Qui prior est in tempore, potior est in jure*. (*Wixon v. Bear River and Auburn Water Co.*, 24 Cal. 367, and cases cited.)

C. A. Tuttle, for Respondent.

The respondent owned a ditch on public mineral land. In a valley, some two miles from the ditch, appellant has a ranch. He claimed that his land was injured by sediment carried down by the water. The evidence shows that respondent had but one agent, and that the miners bought the water at the ditch and conducted it to their claims, and used it as they pleased, and that the respondent parted with his right to the water at the ditch when he sold it. It would be sufficient for the purposes of the case to say that the evidence tended to show this.

If the *miner* is a trespasser, in order to make the ditch owner liable, he must in some way be connected with the wrongdoer. He must either be principal and the miner his agent, or he must in some way advise the commission of the trespass. The instructions, of which appellant complains, assume that the ditch owner has parted with his right to the

Opinion of the Court—Sanderson, J.

water, and that the miner is the owner of the same and controls entirely its use. The doctrine of *respondeat superior* cannot apply, for the ditch owner has no further control. He cannot prevent the trespass except by refusing to sell the water. There is nothing in the instructions which imply that the ditch owner even knows when he sells the water that the miner is to use it to wash sediment on to appellant's land. It is not the water as it leaves the ditch which does the damage, but the sediment with which it is loaded after it becomes the property of the miner. The miner takes the water where he pleases. He may or he may not do harm with it. He is not the agent of the ditch owner, nor is he acting under his advice.

The case of *Boswell v. Laird*, 8 Cal., is a case much stronger for appellant than this, and yet the Court held that there was no liability.

By the Court, SANDERSON, J. :

There is some ambiguity in the complaint, for which the plaintiff must be held responsible. It contains a paragraph which evidently has some reference to the agreement of the 19th of March, 1863, between Ziegenbein and the Chamberlains, as if the pleader intended to make it the foundation, in part, of his action, but the agreement is not declared on *in hæc verba*, nor according to its legal effect, and we cannot regard the action as founded upon it in any respect. In this view it becomes unnecessary to consider the effect of that agreement further than to say, that it is evidence tending to show that the ditch leading from Whisky Ravine to Coon Creek is the property of the defendant. We shall, therefore, for the purposes of our decision, consider the action as founded upon an alleged violation by the defendant of the maxim *sic utere tuo ut alienum non lædas*.

As affecting the liability of the defendant, the case made by the pleadings and the evidence has two aspects: first,

Opinion of the Court—Sanderson, J.

regarding the ravine and the ditch leading from it to Coon Creek as a part of the Independent Ditch; and, second; regarding the Independent Ditch as terminating at the ravine.

Under both these aspects, we assume that the damages sustained by the plaintiff resulted from an overflow from the ditch, or ditch and ravine, and not from an overflow of Coon Creek. Of course, for damages caused by the latter, if any, the defendant is in no way responsible, so far as the case shows.

If the defendant has adopted the ravine as a part of his ditch, so that his ditch commences at Coon Creek, several miles above the plaintiff's farm, and, crossing a part of his farm, terminates in Coon Creek, at a point below, he is bound to so use his ditch as not to injure the plaintiff's land, irrespective of the question as to which has the older right or title. He is bound to keep it in good repair, so that the water will not overflow or break through its banks and destroy or damage the lands of other parties; and if, through any fault or neglect of his in not properly managing and keeping it in repair, the water does overflow or break through the banks of the ditch and injure the land of others, either by washing away the soil or by covering the soil with sand, the law holds him responsible. This, however, is to be taken with the qualification that where a ravine or natural watercourse is taken or adopted by a ditch owner as a part of his line of ditch, he is to be understood as so doing only to the extent of the capacity of his ditch. If there is natural water running in the ravine so adopted, he is not responsible for an overflow, so far as it may have resulted from water not discharged into the ravine or watercourse by him. In other words, the overflow must have resulted in consequence of his use of the watercourse as a part of his ditch, or he is not responsible. Hence, if the defendant's ditch commences and terminates at different points on Coon Creek, and Whisky Ravine is a part of it, the defendant is bound to see that the water conveyed by him through it does not over-

Opinion of the Court—Sanderson, J.

flow or break through; and if it does, through any fault or neglect of his, he is liable; but if the overflow would have taken place independent of his ditch, and limited use of the ravine as a part of his ditch, he is not liable. In the latter event any damages resulting to the plaintiff would be the effect of natural causes, for which the defendant could not be held responsible. "Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; moreover it is not absolute or intrinsic, but always relative to some circumstance of time, place or person." (Broom's Legal Maxims, 329.)

If we assume, as claimed by the defendant, that his ditch terminates at the point where it intersects Whisky Ravine, his duty and responsibility are not materially varied. If the plaintiff's land has been overflowed and covered with sand, and thereby rendered less valuable by reason of the defendant's having diverted the waters of Coon Creek, and by means of his ditch caused them to be discharged into Whisky Ravine instead of Coon Creek, thereby increasing the volume of water which would have otherwise flowed through the ravine, the defendant is responsible. Nor can he shield himself from responsibility because he may have sold the water to miners, who used it for mining purposes before it reached the ravine, if the water is delivered to the miners at a point from which it must unavoidably run into the ravine, and necessarily result in the injury complained of. In that event the miners are not the only tortfeasors. The act of the defendant is as wrongful as if he discharged the water into the ravine without first selling it. Without the water there would be no damage done, and it is furnished, or sent upon its errand of mischief, by the act of the defendant. The miners may be joint tortfeasors, but that question is not involved in this case. If the defendant finds it necessary or convenient to discharge the water from his ditch into Whisky Ravine, or at a point from which they

Argument for Appellant.

will naturally flow into that ravine, he is bound to see that no injury results to the plaintiff in consequence of his act, and if it does he is responsible.

It is not necessary to notice specially the instructions of the Court. It is obvious on inspection that they are not in all respects consistent with the foregoing views.

The order denying a new trial is reversed and a new trial granted.

47:282
69:337

SAN FRANCISCO SAVINGS AND LOAN SOCIETY
v. WILLIAM THOMPSON, JR.

BILL OF REVIEW.—If a judgment is erroneous upon the face of the record, a bill of review will not lie to correct the same. In such case the error must be corrected by an appeal from the judgment.

CORRECTION OF ERROR IN JUDGMENT.—If a judgment is rendered payable in currency, and the record shows that it should have been made payable in gold coin, the error cannot be corrected by a bill of review.

BILL TO REVIEW JUDGMENT.—It is doubtful whether a bill of review for errors apparent on the face of the record could be maintained under the old chancery system, after an affirmance of the decree on appeal.

APPEAL from the District Court, Fourth Judicial District, City and County of San Francisco.

The facts are stated in the opinion of the Court.

B. S. Brooks, for Appellant.

It is no objection to the jurisdiction of a Court of Chancery to relieve on the ground of mistake; that it is the mistake of the party applying for relief, or of the solicitor. (*Ball v. Stone*, 1 Simon & Stuart, 218; *Acton v. Pierce*, 2 Vern. 480; *Bishop v. Church*, 2 Ves. 100; 3 Atk. 691; *Welsh v. Harvey*, 2 Ves. 102; *Probart v. Clifford*, 2 Ves. 102; *Simpson v. Vaughan*, 2 Atk. 31; *In re Bail v. Haskell*, 3 Ves. 400; *Grace v. Freeman*, 3 Vern. 400; *Burn v. Burn*, 3 Ves. 573.) Usually the mistake is that of the attorney, solicitor, or scrivener. Thus, in cases of marriage settlements, where the

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Legislative Printing

REVISED LAWS

OF THE

STATE OF CALIFORNIA;

IN FOUR CODES:

POLITICAL, CIVIL, CIVIL PROCEDURE AND PENAL.

CIVIL CODE.

SACRAMENTO:
D. W. GELWICKS, STATE PRINTER.
1871.

PREFACE.

This, the CIVIL CODE, must, in the main, speak for itself. There is so much urgent labor to be performed by the Commission before the meeting of the Legislature, that a more elaborate exposition must be left to a future occasion. It contains four grand Divisions. These are divided into Parts, Parts into Titles, Titles into chapters, chapters into articles, and the *whole* is sectionized consecutively, from the beginning to the end of the Code. Sections have been left in blank at the end of each chapter and article, for future declaration of rules or amendments.

Our Act adopting the Common Law of England (Stats. 1850, 219) is as follows: "The Common Law of England, so far as it is not repugnant to, or inconsistent with, the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the Courts of this State." The Courts hold that this Act does not mean Common Law of England, but of the United States—"American Common Law;" the Common Law of England, as *modified* by the respective States. There are as many authoritative modifications as there are States in the Union. Rules upon the same subjects differ much in different States. When they so differ, or when they need modifications to suit our conditions, the Court, not the Legislature, establishes the law.

This "unwritten" law is a system quite complete, but its *expression* is most fragmentary. It is found scattered throughout thousands of volumes of English and American reports and digests, from the Year Books down to the present time. The Civil Law, with Mexican modifications, prevailed in this State up to the time of the adoption of the Common Law. The history of civilization does not furnish a parallel, of placing upon a conquered people a whole system of "unwritten" laws, foreign to them and their language, and which could only be found by searching out its disintegrated elements. The Legislature has never provided for a translation of the Common Law into Spanish. The citizen and the lawyer alike complain over the want of a condensed methodical expression of the law. The Civil Code of New York—a monument of legal wisdom and patient industry—is a collection of Common Law rules and principles, combined with a consolidation of statutes like our own, all concisely stated, logically and harmoniously arranged, in order of subjects corresponding to Blackstone's Commentaries. We "supply the defect" in our Act adopting the Common Law, by specifying the general rules already embraced in its very general terms, and for this purpose avail ourselves of the exhaustive labors of the New York Commission. Most of our statutes have been taken, from time to time, from sister States, and mostly from New York. The chapters on *Special Partnerships* (Stats. 1870, 123) and *Adoption of Children* (Stats. 1870, 530) were taken bodily from the Civil Code of New York.

The sharp lines between statute law and the Common Law, remaining unexpressed in Code form, are toned down. The Code and the Common Law are but harmonious parts of one system, differing only in name—in the terms employed, indicating the different modes of adoption.

The work of revising such of our statutes as pertain to this Code, and giving them conciseness in harmony with the general style of that Code, and of incorporating them in their appro-

priate places, has been performed with all reasonable care. The law on marriage and divorce has been more fully declared; the distinction between sealed and unsealed instruments has been abolished; married women authorized to convey separate property without the signatures of their husbands; conveyances and acknowledgments simplified, and all parts of the Code made to harmonize with these changes. It is believed that in the main the work is well done. Doubtless some defects or omissions will be discovered on final examination after printing as a whole, which the Commission, Committee or Examining Board will correct before presentation to the Legislature in bill form.

The Code can be considered and be accepted or rejected as a *whole*, or those Acts of our statutes which have been revised and incorporated into the Code can be considered and passed by themselves. The Legislature can take its choice as between the *whole* volume or the revised Titles from the statutes. Alternate bills can be prepared to carry out either plan. Those who choose to follow the Commission through this Code should obtain a copy of the New York Civil Code, as a better means of testing the accuracy of our work. Its numerous references to leading cases, in which the particular principle declared has been adjudicated, and the copious notes, afford the highest guarantee of the correctness of that work.

We make acknowledgments to Judges O. C. Pratt, S. H. Dwinelle, E. D. Sawyer and T. Reed; also, to Messrs. Williams and Thornton, S. Wilson and J. B. Harmon, for examinations and suggestions concerning some portions of the work.

CHARLES LINDLEY,
JNO. C. BURCH,
CREED HAYMOND,
Commissioners.

OFFICE REVISION COMMISSION,
Sacramento, October 2d, 1871.

ANALYSIS OF THE CONTENTS.

GENERAL DEFINITIONS AND DIVISIONS.

SECTION	1. Title of Code.....	1
	2. When to take effect.....	2
	3. Definition of law.....	2
	4. Action of sovereign power.....	2
	5. The common law the rule of decision.....	2
	6. Two kinds of common law.....	3
	7. No common law, where the law is declared by this Code.....	3
	8. Two kinds of civil rights.....	3
	9. Rights, how modified.....	3
	10. Divisions of this Code.....	3

DIVISION FIRST.

PERSONS.

PART I. PERSONS.

II. PERSONAL RIGHTS.

III. PERSONAL RELATIONS.

IV. CORPORATIONS.

PART I.

PERSONS.

SECTION	17. Minors, who are.....	7
	18. Periods of minority, how calculated	7
	19. Adults, who are.....	7
	20. Status of minors, how changed.....	8

SECTION 21. Unborn child.....	8
22. Persons made adults by other States, considered as such in this State, when domiciled herein.....	8
23. Minors by the laws of other State or country, how considered in this State.....	8
24. Persons of unsound mind.....	8
25. Custody of minors.....	8
26. Minors cannot give a delegation of power.....	8
27. Cannot hold offices of trust; may of skill.....	8
28. Contracts of minors made; disaffirmed.....	8
29. When minor may disaffirm.....	9
30. Cannot disaffirm contract for necessities.....	9
31. Nor certain obligations.....	9
32. Contracts of persons without understanding.....	9
33. Contracts of other insane persons.....	9
34. Powers of persons whose incapacity has been adjudged.....	9
35. Minors liable for wrongs.....	10
36. Not liable for exemplary damages.....	10
37. Minors may enforce their rights.....	10

PART II.

PERSONAL RIGHTS.

SECTION 43. General personal rights.....	11
44. Defamation, what.....	11
45. Libel, what.....	11
46. Slander, what.....	12
47. What communications are privileged.....	13
48. Protection to personal relations.....	13
49. Right to use force.....	13

PART III.

PERSONAL RELATIONS.

TITLE I. MARRIAGE.

II. PARENT AND CHILD.

III. GUARDIAN AND WARD.

IV. MASTER AND SERVANT.

TITLE I.

MARRIAGE.

CHAPTER I. THE CONTRACT OF MARRIAGE.

II. DIVORCE.

III. HUSBAND AND WIFE.

CONTENTS.

ix

CHAPTER I.

THE CONTRACT OF MARRIAGE.

ARTICLE I. VALIDITY OF MARRIAGE.

II. AUTHENTICATION OF MARRIAGE.

ARTICLE I.

VALIDITY OF MARRIAGE.

SECTION 55. What constitutes marriage	16
56. Minors capable of contracting marriage	16
57. Marriage, how manifested and proved.....	17
58. When void.....	18
59. Incompetency of parties to.....	18
60. Of whites and negroes or mulattoes, void.....	18
61. Polygamy forbidden.	18
62. Pardon does not restore marital rights.....	18
63. Marriage contracts subject to the same rules as other contracts.....	19
64. Marriage contracted without the State.....	19

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

SECTION 68. Marriage, how solemnized.....	19
69. Marriage license	19
70. By whom solemnized	20
71. No particular form of solemnization.....	20
72. Substantial requisites.....	20
73. Certificate of marriage.....	20
74. Certificate to parties and Recorder.....	20
75. Déclaration of marriage, how made	21
76. Action to affirm unsolemnized marriages.....	21

CHAPTER II.

DIVORCE.

ARTICLE I. NULLITY.

II. DISSOLUTION.

III. CAUSES FOR DENYING DIVORCE.

IV. GENERAL PROVISIONS.

ARTICLE I.

NULLITY.

SECTION 82. Cases where marriage may be annulled.....	22
83. Action to obtain decree of nullity in certain cases, when and by whom commenced.....	23
84. Children of annulled marriage.....	23
85. Custody of children	24
86. Effect of judgment of nullity.....	24

b

CONTENTS.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

SECTION 90. Marriage, how dissolved	24
91. Divorce, what.....	24
92. Causes for divorce.....	25
93. Adultery defined.....	25
94. Extreme cruelty, what.....	25
95. Desertion, what.....	25
96. Desertion, how manifested.....	26
97. In case of stratagem or fraud, who commits desertion.....	26
98. In case of cruelty, where one party leaves the other, who commits desertion.....	26
99. Separation by consent not desertion	26
100. Intent not to be inferred	26
101. Separation and intent to desert not always coincident.....	27
102. Consent to separate revocable.....	27
103. Desertion, how cured. Effect of refusing condonation.....	27
104. Wife must abide by husband's selection of home, or it is desertion on her part.....	27
105. If the place is unfit, and wife refuses to conform, it is desertion by the husband	27
106. Wilful neglect, what.....	27
107. Habitual intemperance, what.....	28
108. Felony, what	28

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

SECTION 112. Divorces denied, on showing what.....	29
113. Connivance, what	29
114. Corrupt consent, how manifested.....	29
115. Collusion, what	29
116. Condonation, what.....	29
117. Requisites to condonation.....	29
118. Evidence of condonation.....	30
119. Condonation, when operates to bar divorce.....	30
120. Concealment of facts in certain case makes condonation void	30
121. Condonation, how revoked	30
122. Recrimination, what.....	31
123. Condonation in a recriminatory defence a bar to such defence, when ...	31
124. Divorces denied, when.....	31
125. Lapse of time establishes certain presumptions.....	32
126. Presumptions may be rebutted.....	32
127. Limitation of time	32
128. Divorces granted, when.....	32
129. Proof of actual residence required. Presumptions do not apply.....	33
130. Additional rules of practice in divorce cases.....	33
131. Additional affirmative statements required in complaint... ..	34
132. Divorce not to be granted by default, etc.	34

CONTENTS.

xi

ARTICLE IV.

GENERAL PROVISIONS.

SECTION 136. Relief may be adjudged in some cases, where separation is denied.....	35
137. Expense of action.....	35
138. Orders respecting custody of children.....	35
139. Support of wife and children on divorce or separation granted to wife ...	35
140. Security for maintenance and alimony.....	35
141. Court shall resort to what, in executing certain sections.....	35
142. If wife has sufficient for her support, Court may withhold allowance ...	35
143. Common and separate property may be subjected to support and educate children	36
144. When wife shall support husband out of her separate property.....	36
145. Legitimacy of issue.....	36
146. Same.....	36
147. Disposition of common property on divorce.....	36
148. How disposed of when divorce rendered on adultery as a cause.....	37
149. Such an action subject to revision on appeal.....	37

CHAPTER III.

HUSBAND AND WIFE.

SECTION 155. Mutual obligations of husband and wife.....	38
156. Rights of husband, as head of family.....	38
157. In other respects, their interests separate.....	38
158. Husband and wife may make contracts.....	38
159. How far may impair their legal obligations.....	38
160. Consideration for agreement of separation.....	38
161. May be joint tenants, etc.....	38
162. Separate property of the wife.....	38
163. Separate property of the husband.....	39
164. Common property.....	39
171. Inventory of separate property of wife	39
172. Filing inventory, notice of wife's title.....	39
173. Non-entry of property therein prima facie evidence that it is not common property	39
174. Earnings of wife not liable for debts of husband.....	40
175. Earnings of wife, when living separate, separate property.....	40
176. Liability for debts of wife contracted before marriage.....	40
177. Wife's property not liable for debts of the husband, but liable for her own debts.....	40
178. Power of the husband over common property.....	40
179. Courtesy and dower not allowed.....	41
180. Neither answerable for the acts of the other.....	41
181. Support of wife.....	41
182. Husband not liable when abandoned by wife.....	41
183. Rights of husband and wife governed by what.....	41
184. Marriage settlement contracts, how executed.....	41
185. To be acknowledged and recorded.	41
186. Effect of recording.....	41
187. Minors may make marriage settlements.....	42
188. Rights of married woman as sole trader.....	42

TITLE II.

PARENT AND CHILD.

CHAPTER I. BY BIRTH.
II. BY ADOPTION.

CHAPTER I.

CHILDREN BY BIRTH.

SECTION 193. Legitimacy of children born in wedlock.....	43
194. Legitimacy of children born out of wedlock.....	43
195. Who may dispute the legitimacy of a child.....	43
196. Obligation of parents for the support and education of their children..	43
197. Custody of legitimate child.....	43
198. Husband and wife living separate, neither to have superior right to custody of children.....	43
199. When husband or wife may bring action for the exclusive control of children. Decree in such cases.....	44
200. Custody of an illegitimate child.....	44
201. Allowance to parent.....	44
202. Parent cannot control the property of child.....	44
203. Remedy for parental abuse.....	44
204. When parental authority ceases.....	44
205. Remedy when a parent dies without providing for the support of his child.....	44
206. Reciprocal duties of parents and children in maintaining each other...	45
207. When a parent is liable for necessaries supplied to a child.....	45
208. When a parent is not liable for support furnished his child.....	45
209. Husband not bound for the support of his wife's children by a former marriage.....	45
210. Compensation and support of adult child.....	45
211. Parent may relinquish services and custody of child.....	45
212. Wages of minors.....	46
213. Right of parent to determine the residence of child.....	46
214. Parent not liable for acts of child.....	46
215. Wife in certain cases may obtain custody of minor children.....	46

CHAPTER II.

ADOPTION.

SECTION 221. Child may be adopted.....	47
222. Who may adopt.....	47
223. Consent of wife necessary	47
224. Consent of child's parents.....	47
225. Consent of child.....	48
226. Proceedings on adoption.....	48
227. Judge's order.....	48
228. Effect of adoption.....	48

CONTENTS.

xiii

SECTION 229. Effect on former relations of child.....	48
230. Adoption of illegitimate child	48

TITLE III.

GUARDIAN AND WARD.

SECTION 236. Guardian, what.....	50
237. Ward, what.....	50
238. Kinds of guardians.....	50
239. General guardian, what.....	50
240. Special guardian, what.....	50
241. Appointment by parent.....	50
242. No person guardian of estate without appointment.....	50
243. Appointment by Court	50
244. Same.....	51
245. Jurisdiction	51
246. Rules for awarding custody of minor.....	51
247. Powers of guardian appointed by Court.....	51
248. Duties of guardian of the person.....	51
249. Duties of guardian of estate.....	52
250. Relation confidential.....	52
251. Guardian under direction of Court.....	52
252. Death of a joint guardian.....	52
253. Removal of guardian.....	52
254. Guardian appointed by parent, how superseded.....	52
255. Guardian appointed by Court, how superseded.....	53
256. Release by ward.....	53
257. Guardian's discharge.....	53
258. Insane persons.....	53

TITLE IV.

MASTER AND SERVANT.

SECTION 264. Minors may apprentice themselves.....	54
265. Consent of parents, etc., requisite.....	54
266. Written consent.....	55
267. Executors may bind.....	55
268. Supervisors may bind out.....	55
269. Town officers.....	55
270. Age of apprentice to be inserted in indentures.....	55
271. Indentures, conditions in.....	55
272. Same.....	56
273. Deposit of indentures.....	56
274. Alien minors.....	56
275. Contract under preceding section to be acknowledged.....	56
276. Causes for annulling indentures.....	56
277. Proceedings to annul indentures.....	57
278. Service of apprentice, how enforced.....	57

CONTENTS.

TITLE II.

PARENT AND CHILD.

CHAPTER I. BY BIRTH.
II. BY ADOPTION.

CHAPTER I.

CHILDREN BY BIRTH.

SECTION 193. Legitimacy of children born in wedlock.....	43
194. Legitimacy of children born out of wedlock.....	43
195. Who may dispute the legitimacy of a child.....	43
196. Obligation of parents for the support and education of their children..	43
197. Custody of legitimate child.....	43
198. Husband and wife living separate, neither to have superior right to custody of children.....	43
199. When husband or wife may bring action for the exclusive control of children. Decree in such cases.....	44
200. Custody of an illegitimate child.....	44
201. Allowance to parent.....	44
202. Parent cannot control the property of child.....	44
203. Remedy for parental abuse.....	44
204. When parental authority ceases.....	44
205. Remedy when a parent dies without providing for the support of his child.....	44
206. Reciprocal duties of parents and children in maintaining each other...	45
207. When a parent is liable for necessaries supplied to a child.....	45
208. When a parent is not liable for support furnished his child.....	45
209. Husband not bound for the support of his wife's children by a former marriage.....	45
210. Compensation and support of adult child.....	45
211. Parent may relinquish services and custody of child.....	45
212. Wages of minors.....	46
213. Right of parent to determine the residence of child.....	46
214. Parent not liable for acts of child.....	46
215. Wife in certain cases may obtain custody of minor children.....	46

CHAPTER II.

ADOPTION.

SECTION 221. Child may be adopted.....	47
222. Who may adopt.....	47
223. Consent of wife necessary	47
224. Consent of child's parents.....	47
225. Consent of child.....	48
226. Proceedings on adoption.....	48
227. Judge's order.....	48
228. Effect of adoption.....	48

CONTENTS.

xiii

SECTION 229.	Effect on former relations of child.....	48
230.	Adoption of illegitimate child	48

TITLE III.

GUARDIAN AND WARD.

SECTION 236.	Guardian, what.....	50
237.	Ward, what.....	50
238.	Kinds of guardians.....	50
239.	General guardian, what.....	50
240.	Special guardian, what.....	50
241.	Appointment by parent.....	50
242.	No person guardian of estate without appointment.....	50
243.	Appointment by Court	50
244.	Same.....	51
245.	Jurisdiction	51
246.	Rules for awarding custody of minor.....	51
247.	Powers of guardian appointed by Court.....	51
248.	Duties of guardian of the person.....	51
249.	Duties of guardian of estate.....	52
250.	Relation confidential.....	52
251.	Guardian under direction of Court.....	52
252.	Death of a joint guardian.....	52
253.	Removal of guardian.....	52
254.	Guardian appointed by parent, how superseded.....	52
255.	Guardian appointed by Court, how superseded.....	53
256.	Release by ward.....	53
257.	Guardian's discharge.....	53
258.	Insane persons.....	53

TITLE IV.

MASTER AND SERVANT.

SECTION 264.	Minors may apprentice themselves.....	54
265.	Consent of parents, etc., requisite.....	54
266.	Written consent.....	55
267.	Executors may bind.....	55
268.	Supervisors may bind out.....	55
269.	Town officers.....	55
270.	Age of apprentice to be inserted in indentures.....	55
271.	Indentures, conditions in.....	55
272.	Same.....	56
273.	Deposit of indentures.....	56
274.	Alien minors.....	56
275.	Contract under preceding section to be acknowledged.....	56
276.	Causes for annulling indentures.....	56
277.	Proceedings to annul indentures.....	57
278.	Service of apprentice, how enforced.....	57

PART IV.

CORPORATIONS.

- TITLE I. GENERAL PROVISIONS APPLICABLE TO ALL CORPORATIONS.
 II. INSURANCE CORPORATIONS.
 III. RAILROAD CORPORATIONS.
 IV. STREET RAILROAD CORPORATIONS.
 V. WAGON ROAD CORPORATIONS.
 VI. BRIDGE, FERRY, WHARF, CHUTE AND PIER CORPORATIONS.
 VII. TELEGRAPH CORPORATIONS.
 VIII. WATER AND CANAL CORPORATIONS.
 IX. HOMESTEAD CORPORATIONS.
 X. SAVINGS AND LOAN CORPORATIONS.
 XI. MINING CORPORATIONS.
 XII. RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.
 XIII. CEMETERY CORPORATIONS.
 XIV. AGRICULTURAL FAIR CORPORATIONS.
 XV. GAS CORPORATIONS.
 XVI. LAND AND BUILDING CORPORATIONS.

TITLE I.

GENERAL PROVISIONS APPLICABLE TO ALL CORPORATIONS.

CHAPTER I. FORMATION OF CORPORATIONS.

- II. CORPORATE STOCK.
 III. CORPORATE POWERS.
 IV. EXTENSION AND DISSOLUTION OF CORPORATIONS.

CHAPTER I.

FORMATION OF CORPORATIONS.

ARTICLE I. CORPORATIONS DEFINED AND HOW ORGANIZED.

II. BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS.

ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

SECTION 232.	Corporation defined.....	60
234.	What are public and private corporations.....	60
235.	Corporations, how formed.....	60
236.	For what purpose private corporations are formed.....	61
237.	How corporations may continue their existence under this Code.....	63

CONTENTS.

xv

SECTION	288. Must commence to perpetuate, when.....	64
	289. Name of instrument creating corporation	64
	290. Articles of incorporation, what to contain.....	64
	291. Certain corporations to state further facts in articles.....	65
	292. Pre-requisite to filing articles. Amounts to be subscribed to be fixed...	65
	293. Pre-requisite to filing articles of corporations for profit.....	65
	294. Oath of officer to subscription of stock and payment of ten per cent...	65
	295. Five corporators, three to be citizens of the State, to sign articles and acknowledge the same.....	66
	296. To submit articles of insurance corporations to Insurance Commis- sioner.....	66
	297. To file articles with County Clerk and Secretary of State, and receive certificate. Term of existence.....	66
	298. Certified copy of certificate to be prima facie evidence of its contents...	67

ARTICLE II.

BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS.

SECTION	302. Adoption of by-laws—when, how, and by whom.....	68
	303. At first meeting of corporation by-laws to be adopted and Directors elected	68
	304. By-laws to be recorded and how amended.....	68
	305. By-laws may be made for certain purposes.....	68
	306. How many and who to be Directors. Vacancies in office of Directors and how filled.....	69
	307. Election of Directors—how, when, and by whom.....	69
	308. Organization of Board.....	70
	309. Officers may be removed, how.....	70
	310. Justice of the Peace may order meeting.....	70
	311. Majority of stock must be represented and a majority vote together, otherwise it is fraudulent	71
	312. All stock may be represented in votes.....	71
	313. Election may be postponed.....	71
	314. Complaints and quo warrantos, and proceedings thereon regarding elections.....	71
	315. Dividends to be from surplus profits.....	72
	316. False certificate, report or notice, to make officers liable.....	72
	317. Meeting by consent to be valid.....	73
	318. Proceedings at meeting to be binding.....	73

CHAPTER II.

CORPORATE STOCK.

ARTICLE I. STOCK AND STOCKHOLDERS.

II. ASSESSMENT OF STOCK.

ARTICLE I.

STOCK AND STOCKHOLDERS.

SECTION	321. All corporations may call in subscriptions and enforce collections.....	74
	322. Liabilities of stockholders. They may be released, when.....	74

SECTION 323. Certificates, how and when issued.....	74
324. Transfer of shares.....	75
325. Transfer of shares held by married women, etc. Dividends payable to married women.....	75
326. Non-resident stockholders. Bonds.....	75
327. Debts not to exceed capital stock.....	76

ARTICLE II.

ASSESSMENTS OF STOCK.

SECTION 331. Directors may levy assessments.....	76
332. Limitation. How levied.....	77
333. Majority of Board may order assessments.....	77
334. What order shall contain.....	77
335. Notice of assessment. Form.....	77
336. Publication and service.....	78
337. Delinquent notice. Form.....	78
338. Contents of notice.....	79
339. How published.....	79
340. Jurisdiction acquired, how.....	79
341. Sale to be by public auction.....	79
342. Highest bidder to be the purchaser.....	79
343. In default of bidders, corporation may purchase.....	80
344. Disposition of stock purchased by corporation.....	80
345. Extension of time of delinquent sale.....	80
346. Assessments shall not be invalidated.....	81
347. Action for recovery of stock, and limitation thereof.....	81
349. Affidavits of publication. Affidavits of sale. To be filed.....	81

CHAPTER III.

CORPORATE POWERS.

ARTICLE I. GENERAL POWERS.

II. LANDS AND RIGHT OF WAY.

III. RECORDS.

IV. EXAMINATION OF CORPORATION.

V. JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY.

ARTICLE I.

GENERAL POWERS.

SECTION 354. Powers of corporations.....	82
355. Limitation of powers.....	83
356. Banking expressly prohibited.....	83
357. Liability of stockholders.....	83
358. Majority to form Board for business.....	83
359. Misnomer does not invalidate instrument.....	83
360. Corporation to organize within one year.....	84
361. Increasing and diminishing capital stock, how.....	84

CONTENTS.

xvii

ARTICLE II.

LANDS AND RIGHT OF WAY.

SECTION 365. Corporations may acquire real estate, and how much.....	85
366. State lands granted for use of corporations.....	86
367. Grant not to embrace town lots.....	86
368. Wood, stone and earth may be taken from State lands.....	86
369. Corporations failing to comply with provisions, to take no grant.....	86
370. Lands to revert to State, when.....	86
371. Selections made, how proved and certified to.....	87
372. County, city and town property, how acquired.....	87
373. Administrators and guardians may convey lands of estates, how.....	87

ARTICLE III.

RECORDS.

SECTION 377. Records—of what, and how kept.....	88
378. Other records to be kept by corporations for profit, and others.....	88

ARTICLE IV.

EXAMINATION OF CORPORATIONS, ETC.

SECTION 382. Examination into affairs of corporation, how made by officers of State.	89
383. Examination made by the Legislature.....	89
384. Chapter and article may be repealed.....	89

ARTICLE V.

JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY.

SECTION 388. Franchise may be treated as property, and sold under execution.....	90
389. Purchaser to transact business of corporation.....	90
390. Purchaser may recover penalties, etc.....	90
391. Corporation to retain powers after sale.....	91
392. Redemption of franchise.....	91
393. When proceedings under execution may be had.....	91

CHAPTER IV.

EXTENSION AND DISSOLUTION OF CORPORATIONS.

SECTION 399. Proceedings to disincorporate.....	92
400. Receivers and Directors of dissolved corporations.....	92
401. On dissolution, Directors to be Trustees for creditors.....	92
402. Powers of such Trustees.....	92
403. Corporations, how dissolved.....	92
404. Any corporation may extend its corporate existence, how.....	93
405. How corporations may continue their existence.....	93
406. Tit. I to apply to all corporations, with certain exceptions.....	93
407. Definitions.....	93

TITLE II.

INSURANCE CORPORATIONS.

CHAPTER I. GENERAL PROVISIONS.

II. FIRE AND MARINE INSURANCE CORPORATIONS.

III. MUTUAL LIFE, HEALTH AND ACCIDENT INSURANCE CORPORATIONS.

CHAPTER I.

GENERAL PROVISIONS.

SECTION 413. To comply with requirements of Insurance Commissioner.....	94
414. Subscriptions to capital stock opened, and how collected.....	94
415. Purchase and conveyance of real estate.....	95
416. Policies, how issued and by whom signed.....	95
417. Dividends, of what, and when declared.....	96
418. Directors liable for loss on insurance in certain cases.....	96

CHAPTER II.

FIRE AND MARINE INSURANCE CORPORATIONS.

SECTION 423. Capital to be at least one hundred thousand dollars.....	96
424. Payment of subscriptions. Capital to be all paid in twelve months....	97
425. Certificate of capital stock paid up to be filed, and when.....	97
426. Property which may be insured.....	98
427. Funds may be invested, how.....	98
428. Rate of risk.....	98
429. Amounts to be reserved before making dividends.....	98
430. Amounts to be reserved by companies with less than two hundred thousand dollars capital.....	99

CHAPTER III.

MUTUAL LIFE, HEALTH AND ACCIDENT INSURANCE CORPORATIONS.

SECTION 437. Capital stock. Guarantee Fund.....	99
438. Of what Guarantee Fund shall consist.....	100
439. What constitutes, and deficiency in fixed capital.....	100
440. Declaration of fixed capital to be filed.....	101
441. Guarantee notes and interest, how disposed of.....	101
442. Insured to be entitled to vote, when.....	102
443. May invest in what securities.....	102
444. Number of Directors may be altered, how.....	102
445. Limitations to the holding of stock and in other particulars may be provided for in by-laws.....	103
446. Premiums, how payable.....	103
447. Corporations to furnish Insurance Commissioner with valuation of policies outstanding, when. How estimated.....	103
448. No stamp required on accident insurance contract.....	104

TITLE III.

RAILROAD CORPORATIONS.

- CHAPTER I. OFFICERS AND CORPORATE STOCK.
- II. ENUMERATION OF POWERS.
- III. BUSINESS, HOW CONDUCTED.

CHAPTER I.

OFFICERS AND CORPORATE STOCK.

SECTION 453. Directors to be elected, when.....	104
454. Assessments of stock, how made and collected.....	104
455. Additional provisions in assessment and transfer of stock	105
456. Corporations may borrow money and issue bonds. Limitation of amount.....	105
457. To provide a Sinking Fund to pay bonds.....	105
458. Capital stock to be fixed.....	106
459. Certificate of payment of fixed capital stock.....	106

CHAPTER II.

ENUMERATION OF POWERS.

SECTION 465. Enumeration of powers.....	107
1. To survey road.....	107
2. May accept real estate.....	107
3. May acquire real estate.....	107
4. Lay out road, how wide.....	107
5. Where may construct road.....	107
6. May cross or connect roads.....	107
7. May purchase land, timber, stone, gravel, etc.....	108
8. Carry persons and freight.....	108
9. Erect necessary buildings.....	108
10. Regulate time and freights, subject to legislation.....	108
11. Regulate force and speed.....	108
12. Subject to Tit. I of this Part.....	108
466. Map and profile to be filed.....	109
467. May change line of road.....	109
468. Forfeiture of franchise.....	109
469. Crossings and intersections. Condemnation.....	109
470. Not to use streets, alleys or water, in cities or towns, except by a two-third vote of the city or town authorities.....	110
471. Railroads through cities not to charge fare to and from points therein..	110
472. When crossing railroads or highways, how other lands are acquired....	110
473. Corporations may consolidate. Publication of notice. Copy to be filed.	111

CHAPTER III.

BUSINESS, HOW CONDUCTED.

SECTION 479. Checks to be affixed to all baggage. Damages.....	111
480. Annual report to be verified. Form of report.....	112
481. Duties of corporation.....	113
482. Corporation to pay damages for refusal.....	113
483. Furnish room inside passenger cars, and be responsible for damages occurring on freight and other cars.....	113
484. Corporations to post printed regulations, and not responsible for dam- ages in violation of rules.....	113
485. To pay damages. Not liable in certain cases. Corporation may re- cover damages, when.....	114
486. Regulations of trains. Penalty.....	114
487. Conductor may eject passengers, when.....	115
488. Officers to wear badge.....	115
489. Rates of charges.....	115
490. Passenger tickets, how issued and to be good for six months.....	116
491. Character of iron to be used.....	116

TITLE IV.

STREET RAILROAD CORPORATIONS.

SECTION 497. Authority to lay street railroad track, how obtained.....	117
498. Restrictions and limitations to the grant of the right of way.....	117
499. May make further regulations and rules.....	118
500. Penalty for overcharging.....	119
501. To provide and furnish passenger tickets. Penalty.....	119
502. Trial, proof and limitation.....	119
503. City or town to reserve certain rights.....	119
504. License to be paid to city or town.....	120
505. Track for grading purposes.....	120
506. What provisions of Tit. III are applicable to street railroads.....	120

TITLE V.

WAGON ROAD CORPORATIONS.

SECTION 512. Three Commissioners to act with surveyor.....	121
513. Survey and map to be filed, and approved by Supervisors.....	121
514. Tolls, etc., to be collected. Penalty for taking unlawful tolls.....	122
515. No tolls to be charged on highways or public roads.....	122
516. Rates of toll to be posted at gate.....	122
517. Toll-gatherer may detain persons until they pay toll.....	122
518. Toll-gatherer not to detain any person unnecessarily.....	122
519. Persons avoiding tolls to pay five dollars.....	123
520. Penalties for trespasses on property of corporation.....	123
521. When capital invested is repaid, tolls to be reduced, etc.....	123
522. May mortgage and hypothecate corporate property.....	123

TITLE VI.

BRIDGE, FERRY, WHARF, CHUTE AND PIER CORPORATIONS.

SECTION 528. Corporation to obtain license from Supervisors.....	124
529. In what contingencies corporate existence ceases.....	124
530. President and Secretary to make annual report, and what to contain. Damages for failing to report.....	124

TITLE VII.

TELEGRAPH CORPORATIONS.

SECTION 536. May use right of way along waters, roads and highways.....	125
537. Persons liable for damages for injuring telegraph property.....	126
538. Party guilty of wilful and malicious injury, liable to one hundred times actual damages.....	126
539. Conditions on which damage to sub-aqueous cable may be recovered...	126
540. Duty to send paid dispatch.....	126
541. May dispose of certain rights.....	127
542. Rates of charges to be fixed, and how published.....	127

TITLE VIII.

WATER AND CANAL CORPORATIONS.

SECTION 548. Corporation may obtain contract to supply city or town.....	127
549. Duties of corporation. Rates fixed by Commissioners.....	127
550. Right to use streets, ways, alleys and roads.....	128
551. To build and keep bridges in repair.....	128

TITLE IX.

HOMESTEAD CORPORATIONS.

SECTION 557. Time of corporate existence.....	129
558. By-laws must specify time for and amount of payment of instalments, and penalty for failure to pay. By-laws to be furnished to any member on demand.....	129
559. Advertisement and sale of delinquent and forfeited shares.....	129
560. May borrow and loan funds—how, and for what time.....	130
561. Minor children, wards and married women may own stock.....	130
562. Forfeiture for speculating in or owing lands exceeding two hundred thousand dollars.....	131
563. When corporation is terminated, and how.....	131
564. Payment of premiums.....	131
565. Annual report to be published.....	132

TITLE X.

SAVINGS AND LOAN CORPORATIONS.

SECTION 571. May loan money—on what terms, how and to whom, and how long.....	132
572. Capital stock, and rights and privileges thereof.....	133
573. No dividends, except from surplus profits. To contract no liability, except for deposits.....	133
574. Property which may be owned by corporations, and how disposed of. Restrictions in purchases as provided above.....	134
575. Married women and minors may own stock in their own right.....	135
576. May issue transferable certificates of deposit. Special certificates.....	135
577. To provide Reserve Fund for the payment of losses.....	135
578. Prohibition on Director and officer, and what vacates office.....	136

TITLE XI.

MINING CORPORATIONS.

SECTION 584. Removal of the principal offices provided for.....	137
585. Directors to file certificates of proceedings in offices of County Clerks and Secretary of State.....	137
586. Transfer agencies.....	137
587. Stock issued at transfer agencies.....	137

TITLE XII.

RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

SECTION 593. Corporations for purposes other than profit, how formed.....	138
594. Additional facts articles of incorporation to set out.....	138
595. Corporation to hold property, and amount of real estate limited.....	139
596. How much land Masons, Odd Fellows and Pioneers may hold.....	139
597. Directors to make verified report annually.....	139
598. Corporations to forfeit franchise and lands. Attorney-General to sue therefor.....	139
599. Corporations may, by order of the District Court, sell or mortgage real estate, when. Petition. Summons or notice. Objections or answer. Trial, order or decree. Court may direct appraisement of property and disposition of proceeds.....	140
600. What may be provided for in their by-laws, etc.....	141
601. Members admitted after incorporation.....	141
602. No member to transfer membership, etc.....	141

TITLE XIII.

CEMETERY CORPORATIONS.

SECTION 608. How much land may be held, and how disposed of.....	142
609. Who are members eligible to vote and hold office.....	142

CONTENTS.

xxiii

SECTION 610. May hold personal property, to what amount. How disposed of.....	143
611. May issue bonds to pay for grounds. Proceeds of sales, how disposed of.....	143
612. May take and hold property or use income thereof, how.....	143
613. Interments in lot, and effect thereof. Transfer of rights only made, how.....	143
614. Lot owners previous to purchase, to be members of the corporation...	144

TITLE XIV.

AGRICULTURAL FAIR CORPORATIONS.

SECTION 620. May acquire and hold real estate, how much.....	144
621. Shall not contract debts or liabilities exceeding amount in treasury	144
622. Not for profit. May fix fee, etc., for membership.....	145

TITLE XV.

GAS CORPORATIONS.

SECTION 628. Corporations to obtain privilege from city or town, and use meters proved by the inspector.....	145
629. Gas to be supplied on written application. Damages for refusal.....	146
630. When corporations may refuse to supply gas.....	146
631. Portions of supply pipes to be laid by the corporation and by appli- cant.....	146
632. Agent of corporation may inspect meters.....	146
633. When persons neglect to pay, gas may be shut off.....	147

TITLE XVI.

LAND AND BUILDING CORPORATIONS.

SECTION 639. How organized	147
640. May borrow money	147
641. Powers and object of the corporation.....	148
642. May insure the lives of members and debtors.....	148
643. What real estate may be owned at any one time.....	148
644. What the by-laws may provide.....	148
645. Secretary must make annual statement, and publish same.....	149
646. Liability of shareholders for debts.....	149
647. Consolidation and transfer of corporation business and property.....	150
648. Married women and minors.....	150

DIVISION SECOND.

PROPERTY.

- PART I. PROPERTY IN GENERAL.
- II. REAL OR IMMOVABLE PROPERTY.
- III. PERSONAL OR MOVABLE PROPERTY.
- IV. ACQUISITION OF PROPERTY.

PART I.

PROPERTY IN GENERAL.

- TITLE I. NATURE OF PROPERTY.
- II. OWNERSHIP.
- III. GENERAL DEFINITIONS.

TITLE I.

NATURE OF PROPERTY.

SECTION 654. Property, what.....	155
655. In what property may exist.....	155
656. Wild animals.....	155
657. Real and personal.....	156
658. Real property.....	156
659. Land.....	156
660. Fixtures.....	156
661. Appurtenances.....	156
662. Property in mines.....	157
663. Personal property.....	157

TITLE II.

OWNERSHIP.

- CHAPTER I. OWNERS.
- II. MODIFICATIONS OF OWNERSHIP.
- III. RIGHTS OF OWNERS.
- IV. TERMINATION OF OWNERSHIP.

CONTENTS.

xxv

CHAPTER I.

OWNERS.

SECTION 669. Owner.....	157
670. Property of the State.....	157
671. Who may own property.....	158
672. Aliens inheriting, must claim within five years.....	158

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

- ARTICLE I. INTERESTS IN PROPERTY.
 II. CONDITIONS OF OWNERSHIP.
 III. RESTRAINTS UPON ALIENATION.
 IV. ACCUMULATIONS.

ARTICLE I.

INTERESTS IN PROPERTY.

SECTION 678. Ownership, absolute or qualified.....	159
679. When absolute.....	159
680. When qualified.....	159
681. Several ownership, what.....	159
682. Ownership of several persons.....	159
683. Joint interest, what.....	159
684. Partnership interest, what.....	160
685. Interest in common, what.....	160
686. What interests are in common.....	160
687. Community property.....	160
688. Interests as to time.....	160
689. Present interest, what.....	160
690. Future interest, what.....	160
691. Perpetual interest, what.....	161
692. Limited interest, what.....	161
693. Kinds of future interests.....	161
694. Vested interests.....	161
695. Contingent interests.....	161
696. Two or more future interests.....	161
697. Certain future interests not to be void.....	161
698. Posthumous children.....	161
699. Qualities of expectant estates.....	161
700. Same.....	162
701. Interests in real property.....	162
702. Same.....	162
703. What future interests are recognized.....	162

ARTICLE II.

CONDITIONS OF OWNERSHIP.

SECTION 707. Fixing the time of enjoyment.....	162
708. Conditions.....	162

d

SECTION 709. Certain conditions precedent, void.....	162
710. Conditions restraining marriage, void.....	163
711. Conditions restraining alienation, void.....	163

ARTICLE III.

RESTRAINTS UPON ALIENATION.

SECTION 715. How long it may be suspended.....	163
716. Future interests void, which suspend power of alienation.....	163
717. Leases of agricultural land, for over ten years, void.....	163
718. Leases of city lots, for over twenty years, void.....	164

ARTICLE IV.

ACCUMULATIONS.

SECTION 722. Dispositions of income.....	164
723. Accumulations, when void.....	164
724. Accumulation of income.....	164
725. Other directions, when void in part.....	164
726. Application of income to support, etc., of minor.....	165

CHAPTER III.

RIGHTS OF OWNERS.

SECTION 732. Increase of property.....	165
733. In certain cases who entitled to income of property.....	165

CHAPTER IV.

TERMINATION OF OWNERSHIP.

SECTION 739. Future interests, when defeated.....	166
740. Same.....	166
741. Future interests, when not defeated.....	166
742. Same.....	166

TITLE III.

GENERAL DEFINITIONS.

SECTION 743. Income, what.....	166
749. Time of creation, what.....	167

PART II.

REAL OR IMMOVABLE PROPERTY.

- TITLE I. GENERAL PROVISIONS.
- II. ESTATES IN REAL PROPERTY.
- III. RIGHTS AND OBLIGATIONS OF OWNERS.
- IV. USES AND TRUSTS.
- V. POWERS.

TITLE I.

GENERAL PROVISIONS.

SECTION 755. Real property, how governed.....	169
---	-----

TITLE II.

ESTATES IN REAL PROPERTY.

- CHAPTER I. ESTATES IN GENERAL.
- II. TERMINATION OF ESTATES.
- III. SERVITUDES.

CHAPTER I.

ESTATES IN GENERAL.

SECTION 761. Enumeration of estates	170
762. What estate a fee simple.	170
763. Conditional fees and estates tail abolished.....	170
764. Certain remainders valid.....	171
765. Freeholds. Chattels real. Chattel interests.....	171
766. Estates for life of a third person, when a freehold, etc.....	171
767. Future estates, what.....	171
768. Reversions	171
769. Remainders	171
770. Limitations of chattels real.....	171
771. Suspension by trust.....	172
772. Contingent remainder in fee.....	172
773. Remainders, future and contingent estates, how created.....	172
774. Limitation of successive estates for life	172
775. Remainder upon estates for life of third person.....	172
776. Same.....	173
777. Contingent remainder on a term of years.....	173
778. Remainder of estates for life.....	173
779. Remainder upon a contingency.....	173
780. Heirs of a tenant for life, when to take as purchasers.....	173
781. Construction of certain remainders.....	173
782. Effect of power of appointment.....	174

CHAPTER II.

TERMINATION OF ESTATES.

SECTION 788. Tenancy at will may be terminated by notice.....	174
789. Form and service of notice.....	174
790. Effect of notice.....	174
791. Notice by tenant.....	175
792. Double rent may be collected.....	175
793. Re-entry, when and how to be made.....	175
794. Summary proceedings in certain cases provided for.....	175
795. Notice not necessary before action.....	175

CHAPTER III.

SERVITUDES.

SECTION 801. Servitudes attached to land.....	176
802. Servitudes not attached to land.....	176
803. Designation of estates.....	177
804. By whom grantable.....	177
805. By whom held.....	177
806. Extent of servitudes.....	177
807. Apportioning easements.....	177
808. Rights of owner of future estate.....	177
809. Actions by owner and occupant of dominant tenement.....	177
810. Actions by owner of servient tenement.....	177
811. How extinguished.....	178

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I. RIGHTS OF OWNERS.

II. OBLIGATIONS OF OWNERS.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. INCIDENTS OF OWNERSHIP.

II. BOUNDARIES.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

SECTION 817. Water.....	178
818. Rights of tenant for life.....	179
819. Rights of tenant for years, etc.....	179
820. Same.....	179
821. Rights of grantees of rents and reversion.....	179

CONTENTS.

xxix

SECTION 822. Rights of lessees and their assignees, etc.....	179
823. Remedy on leases for life.....	180
824. Rent dependent on life.....	180
825. Remedy of reversioners, etc.....	180

ARTICLE II.

BOUNDARIES.

SECTION 829. Rights of owner.....	180
830. Boundaries by water.....	180
831. Boundaries by ways.....	181
832. Lateral and subjacent support.....	181
833. Trees whose trunks are wholly on land of one.....	181
834. Line trees.....	181

CHAPTER II.

OBLIGATIONS OF OWNERS.

SECTION 840. Duties of tenant for life.....	181
841. Monuments and fences.....	181

TITLE IV.

USES AND TRUSTS.

SECTION 847. What uses and trusts may exist.....	182
848. Right to possession of land creates legal ownership..	182
849. Certain trusts unaffected.....	182
850. Trustees of estate for use of another take no interest.....	183
851. Preceding sections qualified.....	183
852. Trust must be in writing.....	183
853. Transfer to one for money paid by another.....	183
854. Rights of creditors.....	183
855. Sec. 853 qualified.....	183
856. Purchasers protected.....	184
857. For what purposes express trusts may be created.....	184
858. Certain devises in trust to be deemed powers.....	184
859. Profits of land liable to creditors in certain cases.....	184
860. Other express trusts to be powers in trust.....	185
861. Creation of certain powers not prohibited.....	185
862. And land, etc., to descend to persons entitled.....	185
863. Trustees of express trusts to have whole estate.....	185
864. Author of trust may devise, etc.....	185
865. Title of grantor of trust property.....	185
866. Interests remaining in grantor of express trust.....	186
867. Powers over trust of party interested.....	186
868. Same.....	186
869. Effect of omitting trust in conveyance.....	186
870. Certain sales, etc., by Trustees, void.....	186
871. When estate of Trustee to cease.....	186

TITLE V.

POWERS.

SECTION 877. What powers exist.....	188
878. Application of this Title.....	188
879. Definition of a power.....	188
880. Terms "author of a power" and "holder of a power" defined.....	188
881. Division of powers.....	188
882. Definition of general powers.....	188
883. Definition of special powers.....	188
884. Beneficial powers.....	189
885. Powers in trust.....	189
886. General powers, when in trust.....	189
887. Special powers, when in trust.....	189
888. Who may create power.....	189
889. To whom power may be given.....	189
890. How created.....	189
891. Reservation of powers in conveyances.....	189
892. When power irrevocable.....	190
893. When power a lien.....	190
894. Power of sale in mortgage.....	190
895. Beneficial powers, etc., transferred by insolvent assignments.....	190
896. Who to execute powers.....	190
897. Married women.....	190
898. Same.....	191
899. How executed.....	191
900. Execution by survivors.....	191
901. Execution of power to dispose by devise.....	191
902. Execution of power to dispose by grant.....	191
903. Directions by author, when disregarded.....	191
904. Same.....	191
905. Nominal conditions.....	192
906. When directions of author to be observed.....	192
907. Consent of third person to execution of power.....	192
908. Same.....	192
909. Omission to recite power.....	192
910. Instruments deemed conveyances.....	192
911. Certain dispositions not void.....	193
912. Computation of term of suspension.....	193
913. What estate may be given.....	193
914. Married women, their authority.....	193
915. Defective execution.....	193
916. Fraud.....	193
917. General and beneficial powers to married women.....	193
918. Estate of owner for life, etc., when changed into a fee.....	193
919. Certain powers create a fee.....	194
920. Same.....	194
921. Effect of power to devise inheritance in certain cases.....	194
922. Power to dispose of fee.....	194
923. Power to revoke.....	194
924. Special and beneficial powers, who may take.....	194

SECTION 925. Construction of leasing powers.....	195
926. Power to make leases by owner for life.....	195
927. Release of such power.....	195
928. Mortgages by party having power to lease, etc.....	195
929. Effect thereof.....	195
930. Special and beneficial powers liable to creditors.....	195
931. Future beneficial powers.....	196
932. Trust powers imperative.....	196
933. Effect of right of selection.....	196
934. Construction of certain powers.....	196
935. Same.....	196
936. When Court to execute power.....	196
937. Same.....	196
938. Execution of trust power when compelled by creditors, etc.....	197
939. Defective execution.....	197
940. Application of certain sections.....	197

PART III.

PERSONAL OR MOVABLE PROPERTY.

TITLE I. PERSONAL PROPERTY IN GENERAL.

II. PARTICULAR KINDS OF PERSONAL PROPERTY.

TITLE I.

PERSONAL PROPERTY IN GENERAL.

SECTION 946. By what law governed.....	199
947. Future interests in perishable property, how protected.....	199

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER I. THINGS IN ACTION.

II. SHIPPING.

III. PRODUCTS OF THE MIND.

IV. OTHER KINDS OF PERSONAL PROPERTY.

CHAPTER I.

THINGS IN ACTION.

SECTION 953. Things in action defined.....	200
954. Transfer and survivorship.....	200

CHAPTER II

SHIPPING.

ARTICLE I. GENERAL PROVISIONS.

II. RULES OF NAVIGATION.

ARTICLE I.

GENERAL PROVISIONS.

SECTION 960. Definition of a ship.....	200
961. Appurtenances and equipments.....	200
962. Foreign and domestic navigation.....	201
963. Foreign and domestic ships distinguished.....	201
964. Several owners.....	201
965. Owner for voyage.....	201
966. Registry, etc.....	201

ARTICLE II.

RULES OF NAVIGATION.

SECTION 970. Collisions.....	202
1. Rules as to ships meeting each other.....	202
2. The rule for sailing vessels.....	202
3. Rules for steamers in narrow channels.....	202
4. Same.....	202
5. Rules for steam vessels on different courses.....	202
6. Meeting of steamers.....	203
971. Collision from breach of rules.....	203
972. Breaches of such rules to imply wilful default.....	203
973. Loss, how apportioned.....	203

CHAPTER III.

PRODUCTS OF THE MIND.

SECTION 980. How far the subject of ownership.....	208
981. Joint authorship.....	208
982. Transfer.....	208
983. Effect of publication.....	208
984. Subsequent inventor, author, etc.....	208
985. Private writings.....	209

CHAPTER IV.

OTHER KINDS OF PERSONAL PROPERTY.

SECTION 991. Trade marks and signs.....	209
992. Good will of business.....	209
993. Same.....	209
994. Title deeds.....	209

PART IV.

ACQUISITION OF PROPERTY.

- TITLE I. MODES IN WHICH PROPERTY MAY BE ACQUIRED.
- II. OCCUPANCY.
- III. ACCESSION.
- IV. TRANSFER.
- V. HOMESTEADS.
- VI. WILLS.
- VII. SUCCESSION.
- VIII. MINES.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

SECTION 1000. Property, how acquired.....	211
---	-----

TITLE II.

OCCUPANCY.

SECTION 1006. Simple occupancy.....	211
1007. Prescription.....	212

TITLE III.

ACCESSION.

- CHAPTER I. TO REAL PROPERTY.
- II. TO PERSONAL PROPERTY.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

SECTION 1013. Fixtures.....	212
1014. Alluvion.....	212
1015. Sudden removal of bank.....	213
1016. Islands, in navigable streams.....	213
1017. In unnavigable streams.....	213
1018. Islands formed by division of stream.....	213
1019. Abandoned bed of stream.....	213

CONTENTS.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.,

SECTION 1025. Accession by uniting several things.....	214
1026. Principal part, what.....	214
1027. Same.....	214
1028. Uniting materials and workmanship.....	214
1029. Inseparable materials.....	214
1030. Materials of several owners.....	215
1031. Wilful trespassers.....	215
1032. Owner may elect between the thing and its value.....	215
1033. Wrong-doer liable in damages.....	215

TITLE IV.

TRANSFER.

CHAPTER I. TRANSFER IN GENERAL.

II. TRANSFER OF REAL PROPERTY.

III. TRANSFER OF PERSONAL PROPERTY.

IV. RECORDING TRANSFERS OF REAL PROPERTY.

V. UNLAWFUL TRANSFERS.

CHAPTER I.

TRANSFERS IN GENERAL.

ARTICLE I. DEFINITION OF TRANSFER.

II. WHAT MAY BE TRANSFERRED.

III. MEANS OF TRANSFER.

IV. INTERPRETATION OF GRANTS.

V. EFFECT OF TRANSFER.

ARTICLE I.

DEFINITION OF TRANSFER.

SECTION 1039. Transfer, what.....	216
1040. Voluntary transfer.....	216

ARTICLE II.

WHAT MAY BE TRANSFERRED.

SECTION 1044. What may be transferred.....	217
1045. Possibility.....	217
1046. Right of re-entry can be transferred.....	217
1047. Owner ousted of possession may transfer.....	217

CONTENTS.

xxxv

ARTICLE III.

MEANS OF TRANSFER.

SECTION 1051. When oral.....	217
1052. Grant, what.....	218
1053. Term "grant" includes what.....	218
1054. Delivery necessary.....	218
1055. Date.....	218
1056. Delivery to grantee is necessarily absolute.....	218
1057. Grant made on condition subsequent.....	218
1058. Instrument to pass an estate on condition precedent only an executory contract.....	218
1059. Delivery in escrow.....	219
1060. Surrendering or cancelling grant does not reconvey.....	219
1061. Constructive delivery.....	219

ARTICLE I.

INTERPRETATION OF GRANTS.

SECTION 1065. Grants, how interpreted.....	220
1066. Construction of instruments.....	220
1067. Limitations, how controlled.....	220
1068. Recitals, when resorted to.....	220
1069. If language ambiguous, what may be considered.....	220
1070. Interpretation against grantor.....	221
1071. Grant, how construed.....	221
1072. Irreconcilable provisions.....	221
1073. Thing granted must be described.....	221
1074. Words "northerly," "southerly," etc., mean what.....	221
1075. Meaning of "heirs" and "issue," in certain remainders.....	221
1076. Words of inheritance unnecessary.....	221
1077. When fee simple title is presumed to pass.....	221
1078. Subsequently acquired title passes by operation of law.....	222

ARTICLE V.

EFFECT OF TRANSFER.

SECTION 1082. What title passes.....	222
1083. What interests affected.....	222
1084. Incidents.....	222
1085. Grant may inure to benefit of stranger.....	222

CHAPTER II.

TRANSFER OF REAL PROPERTY.

ARTICLE I. MODE OF TRANSFER.

II. FORM AND EFFECT OF TRANSFER—CODE COVENANTS.

ARTICLE I.

MODE OF TRANSFER.

SECTION 1091. Requisites for transfer of real property.....	223
1092. Written instruments, what are.....	223

SECTION 1093.	Grant by married woman, how acknowledged.....	224
1094.	Power of attorney of married woman, how acknowledged.....	224
1095.	Attorney in fact, how must execute for principal.....	225
1096.	Distinction between sealed and unsealed instruments abolished. Im- port consideration.....	225
1097.	Want of consideration, <i>onus probandi</i> , where lies.....	225
1098.	Witness to an instrument not necessary to its validity.....	225

ARTICLE II.

FORM AND EFFECT OF TRANSFER—CODE COVENANTS.

SECTION 1102.	Form of simple grant	226
1103.	No implied covenants in grants.....	227
1104.	Code Covenants, special and general.....	227
1105.	Special Code Covenants, what.....	227
1106.	General Code Covenants, what.....	227
1107.	Form of grant, with Special Code Covenants.....	227
1108.	Form of grant, with General Code Covenants.....	228
1109.	Construction of Code Covenants.....	228
1110.	Covenant "against prior grants made by the grantor," what.....	228
1111.	Covenant "against encumbrances imposed or suffered by the grantor," what	229
1112.	Covenant "of ownership," what.....	229
1113.	Covenant "against encumbrances," what.....	230
1114.	"Encumbrances" defined.....	230
1115.	Grantee not barred from obtaining rescission of grant, or damages for false representations.....	230
1116.	Code Covenants personal covenants.....	231
1117.	Damages for breach of certain Code Covenants, how determined.....	231
1118.	Damages for breach of certain other Code Covenants, how determined.	231
1119.	Liabilities on other than Code Covenants depend upon what.....	231
1120.	What passes by grant.....	231
1121.	A fee simple title presumed, when.....	231
1122.	Any title subsequently acquired by grantor passes to grantee, when....	231
1123.	Grant, how far conclusive on purchasers.....	232
1124.	Conveyances by owner for life or for years.....	232
1125.	Title to highway.....	232
1126.	Attornment by tenant, when unnecessary. Liabilities of tenant.....	232
1127.	Lineal and collateral warranties.....	232
1128.	Attornment to a stranger.....	233
1129.	What easements pass with property.....	233

CHAPTER III.

TRANSFERS OF PERSONAL PROPERTY.

ARTICLE I. MODE OF TRANSFER.

II. WHAT OPERATES AS A TRANSFER.

III. GIFTS.

CONTENTS

xxxvii

ARTICLE I.

MODE OF TRANSFER.

SECTION 1135. When must be in writing	233
1136. Transfer by sale, etc.....	233

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

SECTION 1140. Transfer of title under sale.....	234
1141. Transfer of title under executory agreement for sale.....	234
1142. When buyer acquires better title than seller has.....	234

ARTICLE III.

GIFTS.

SECTION 1146. Gifts defined.....	234
1147. Gift, how made.....	235
1148. Gift not revocable.....	235
1149. Gift in view of death, what.....	235
1150. When gift presumed to be in view of death.....	235
1151. Revocation of gift in view of death.....	235
1152. Effect of will upon gift.....	235
1153. When treated as legacy.....	235

CHAPTER IV.

RECORDING TRANSFERS OF REAL PROPERTY.

ARTICLE I. WHAT MAY BE RECORDED.

II. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

III. EFFECT OF RECORDING, OR THE WANT THEREOF.

IV. MODE OF RECORDING.

ARTICLE I.

WHAT MAY BE RECORDED.

SECTION 1159. Letters patent may be recorded without acknowledgment. Effect of recording.....	236
1160. What kind of instruments may be recorded.....	236
1161. Instruments evidencing title declared by judgment, recorded.....	236
1162. What shall not be recorded.....	236
1163. Instruments proved by other than subscribing witnesses, when and how recorded.....	237
1164. Instruments executed under power of attorney, when deemed recorded.	237
1165. Powers of attorney, how revoked.....	237

ARTICLE II.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS,

SECTION 1169. By whom acknowledgments may be taken in this State.....	238
1170. Same.....	238

SECTION 1171. By whom taken without the State.....	239
1172. By whom taken without the United States.....	239
1173. Deputy can take acknowledgment.....	239
1174. Requisites for acknowledgments.....	240
1175. Officer must indorse certificate.....	240
1176. Form of certificate.....	240
1177. Attorney in fact must exhibit to officer, what.....	240
1178. Form of certificate when acknowledgment is by attorney in fact.....	241
1179. Acknowledgment by married woman.....	241
1180. Form of certificate when acknowledgment is by married woman.....	241
1181. Conveyance by married woman, effect of.....	242
1182. Interpreter may be employed.....	242
1183. Proof of execution, how made.....	242
1184. Witness must be personally known to officer....	242
1185. Witness shall prove, what.....	242
1186. Certificate of officer shall be indorsed thereon, setting forth what.....	243
1187. Handwriting may be proved, when.....	243
1188. Evidence must prove, what.....	244
1189. Certificate of officer.....	244
1190. Officers authorized to do certain things.....	244
1191. Officers must affix their signatures.....	244
1192. When instrument is improperly certified, party may have action to correct error.....	245
1193. In certain cases, parties interested entitled to action in Court to obtain judgment of proof of an instrument for record.....	245
1194. Conveyances heretofore made to be governed by then existing laws...	245
1195. Recording, and as evidence, to be governed by then existing laws....	245
1196. Statutes curing acknowledgments, etc., preserved.....	246

ARTICLE III.

EFFECT OF RECORDING.

SECTION 1200. Purchaser for value.....	246
1201. Unrecorded instrument valid between the parties.....	247
1202. Unrecorded instrument, when void.....	247
1203. Priority of record.....	247
1204. Purchase from subsequent granteo without notice of prior unrecorded grant, valid.....	247
1205. When prior and subsequent grant are both recorded, a vendee under the latter takes with notice of the former.....	247
1206. Holder of recorded instrument is presumed bona fide purchaser as against whom.....	247
1207. Actual notice, etc., evidence of bad faith.....	248
1208. Circumstances to rebut presumption.....	248
1209. Unrecorded instruments void as against encumbrances.....	248
1210. Sheriff's grant has relation to encumbrance as muniment of title.....	248
1211. Sheriff's grants and certificates of purchase subject to this article.....	248
1212. Priority of record gives priority of right.....	248
1213. Action in District Court to quiet title in certain cases.....	249

CONTENTS.

xxxix

ARTICLE IV.

MODE OF RECORDING.

SECTION 1217. In what office.....	250
1218. Instrument, when deemed recorded.....	250
1219. Books of record.....	250
1220. Duties of Recorder.....	250
1221. Transfers of vessels.....	250

CHAPTER V.

UNLAWFUL TRANSFERS.

SECTION 1227. Certain instruments void against purchasers, etc.....	251
1228. Not void against purchaser having notice, unless fraud is mutual...	251
1229. Power to revoke, when deemed executed.....	251
1230. Same.....	251
1231. Other provisions.....	252

TITLE V.

HOMESTEADS.

CHAPTER I. GENERAL PROVISIONS RELATING TO HOMESTEADS.	
. II. THE HOMESTEAD OF THE HEAD OF A FAMILY.	
. III. THE HOMESTEAD OF A PERSON OTHER THAN THE HEAD OF A FAMILY.	

CHAPTER I.

GENERAL PROVISIONS RELATING TO HOMESTEADS.

SECTION 1237. Homestead, what constitutes, and its exemption.....	252
1238. Homestead, from what property may be taken.....	253
1239. Debts from which homestead is not exempt.....	253
1240. Conveyances, mortgages, etc., how executed, acknowledged and recorded.....	253
1241. Homestead, how abandoned.....	254
1242. Proceedings when homestead is claimed to exceed the amount of exemption.....	254
1243. How property disposed of on report of appraisers.....	254
1244. Fees, when the claimant to pay and when the judgment creditor.....	255
1245. Official duties, how enforced.....	255
1246. Who may acquire homesteads, and of what value.....	255

CHAPTER II.

THE HOMESTEAD OF THE HEAD OF A FAMILY.

SECTION 1252. Homestead declaration, what to contain.....	256
1253. "Head of a family" defined.....	256
1254. Declaration, how executed and recorded, and the title thereby vested...	256

CONTENTS.

CHAPTER III.

THE HOMESTEAD OF A PERSON OTHER THAN THE HEAD OF A FAMILY.

SECTION 1260. Petition to County Judge for homestead, what to contain.....	257
1261. Judge to appoint appraisers, who must make oath.....	258
1262. If property exceeds one thousand dollars in value, what to be done...	258
1263. Return of appraisers, and Judge to grant certificate.....	258
1264. Title to be recorded, where and how.....	259

TITLE VI.

WILLS.

- CHAPTER I. EXECUTION AND REVOCATION OF WILLS.
- II. INTERPRETATION OF WILLS.
- III. GENERAL PROVISIONS RELATING TO WILLS.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

SECTION 1270. Who may make a will.....	260
1271. Monomaniac incompetent.....	260
1272. Will or part thereof procured by fraud.....	261
1273. Separate property of married women.....	261
1274. What may pass by will.....	261
1275. Who may take by will.....	261
1276. Written will, how to be executed.....	261
1277. Witness to add residence.....	262
1278. Mutual will.....	262
1279. Competency of subscribing witness.....	262
1280. Conditional will.....	262
1281. Gifts to subscribing witnesses void. Creditors competent witnesses...	262
1282. Witness who is a devisee and who would be entitled to share of testa- tor's estate if no will, entitled to share to amount of devise.....	262
1283. Will made out of this State.....	263
1284. Will not duly executed, void.....	263
1285. Subsequent change of domicile.....	263
1286. Republication by codicil.....	263
1287. Nuncupative will, how to be executed.....	263
1288. Requisites of a valid nuncupative will.....	263
1289. Proof of nuncupative wills.....	264
1290. Probate of nuncupative wills.....	264
1291. Written will, how revoked.....	264
1292. Evidence of revocation.....	265
1293. Revocation by obliteration on face of will.....	265
1294. Revocation of duplicate.....	265
1295. Revocation by subsequent will.....	265
1296. Antecedent not revived by revocation of subsequent will.....	265
1297. Revocation by marriage and birth of issue.....	265
1298. Effect of marriage of a man on his will.....	266

CONTENTS.

xli

SECTION	1299. Effect of a marriage of a woman on her will.....	266
	1300. Contract of sale not a revocation.....	266
	1301. Mortgage not a revocation of will.....	266
	1302. Conveyance, when not a revocation.....	266
	1303. When it is a revocation.....	267
	1304. Revocation of codicils.....	267
	1305. Afterborn child, unprovided for, to succeed.....	267
	1306. Children or issue of children of testator unprovided for by his will....	267
	1307. Share of afterborn child, out of what part of estate to be paid.....	267
	1308. Advancement during lifetime of testator.....	268
	1309. Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants.....	268
	1310. Devises of land, how construed.....	268
	1311. Will to pass rights acquired after the making thereof.....	268

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

SECTION	1317. Testator's intention to be carried out.....	269
	1318. Intention to be ascertained from the will.....	269
	1319. Rules of interpretation.....	270
	1320. Several instruments are to be taken together.....	270
	1321. Harmonizing various parts.....	270
	1322. In what case devise not affected.....	270
	1323. When ambiguous or doubtful.....	270
	1324. Words taken in ordinary sense.....	270
	1325. Words to receive an operative construction.....	270
	1326. Intestacy to be avoided.....	270
	1327. Effect of technical words.....	270
	1328. Technical words not necessary.....	271
	1329. Certain words not necessary to pass a fee.....	271
	1330. Power to devise, how executed by terms of will.....	271
	1331. Devise or bequest of all real or all personal property, or both.....	271
	1332. Residuary clause.....	271
	1333. Same.....	271
	1334. "Heirs," "relatives," "issue," "descendants," etc.....	271
	1335. Words of donation and of limitation.....	271
	1336. To what time words refer.....	272
	1337. Devise or bequest to a class.....	272
	1338. When conversion takes effect.....	272
	1339. When child born after testator's death takes under will.....	272
	1340. Mistakes and omissions.....	272
	1341. When devises and bequests vest.....	272
	1342. When cannot be divested.....	272
	1343. Death of devisee or legatee.....	272
	1344. Interests in remainder are not affected.....	273
	1345. Conditional devises and bequests.....	273
	1346. Condition precedent, what.....	273
	1347. Effect of condition precedent.....	273
	1348. Conditions precedent, when deemed performed.....	273

f

SECTION 1349. Conditions subsequent, what	273
1350. Devisees, etc., take as tenants in common.....	273
1351. Advancements, when adempptions.....	273

CHAPTER III.

GENERAL PROVISIONS.

SECTION 1357. Nature and designations of legacies.....	274
1. Specific.....	274
2. Demonstrative.....	274
3. Annuities.....	274
4. Residuary.....	275
5. General.....	275
1358. Order of sale in case of an intestate.....	275
1359. Order of sale in case of a testator.....	275
1360. Legacies, how charged with debts.....	275
1361. Same.....	276
1362. Abatement.....	276
1363. Specific devises and legacies.....	276
1364. Heir's conveyance good, unless will is proved within four years.	276
1365. Possession of legatees.....	276
1366. Bequest of interest.....	276
1367. Satisfaction.....	276
1368. Legacies, when due.....	277
1369. Interest.....	277
1370. Construction of these rules.....	277
1371. Executor according to the tenor.....	277
1372. Power to appoint is invalid.....	277
1373. Executor not to act till qualified.....	277
1374. Provisions as to revocations.....	277
1375. Execution and construction of prior wills not affected.....	277
1376. "Wills" include codicils.....	277
1377. The law of what place applies.....	277
1378. Liability of beneficiaries for testator's obligations.....	278

TITLE VII.

SUCCESSION.

SECTION 1384. Succession defined.....	278
1385. Who first succeeds to possession of estates not devised, and for what purpose.....	279
1386. Succession to and distribution of property.....	279
1387. Illegitimate children to inherit in certain events.....	281
1388. The mother is successor to illegitimate child.....	282
1389. Degrees of kindred, how computed.....	282
1390. Advancements constitute part of distributive share.....	282
1391. Advancements, when too much, or not enough.....	282
1392. What are advancements.....	282
1393. Value of advancements, how determined.....	283
1394. When heir advanced to dies before decedent.....	283

CONTENTS.

xliii

SECTION 1395. Inheritance of husband and wife from each other.....	2
1396. Distribution of the common property in case of death of the wife.....	
1397. Distribution of common property on death of the husband.....	
1398. Inheritance by representation.....	
1399. Aliens may inherit, when and how.....	284
1400. Succession not claimed, Attorney-General to cause to be sold, and proceeds deposited.....	284
1401. When the property and estate escheat to the State.....	285
1402. Property escheated subject to charges as other property.....	285
1403. Successor liable for decedent's obligations.....	285

TITLE VIII.

MINES.

SECTION 1409. Injuring crops or buildings.....	285
1410. Miners to give bonds.....	286
1411. Construction of word "improvements".....	286
1412. After crops are harvested, miners may work.....	286

DIVISION THIRD.

OBLIGATIONS.

PART I. OBLIGATIONS IN GENERAL.

II. CONTRACTS.

III. OBLIGATIONS IMPOSED BY LAW.

IV. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

PART I.

OBLIGATIONS IN GENERAL.

TITLE I. DEFINITION OF OBLIGATIONS.

II. INTERPRETATION OF OBLIGATIONS.

III. TRANSFER OF OBLIGATIONS.

IV. EXTINCTION OF OBLIGATIONS.

TITLE I.

DEFINITION OF OBLIGATIONS.

SECTION 1418. Obligation, what.....	289
1419. How created.....	289

TITLE II.

INTERPRETATION OF OBLIGATIONS.

- CHAPTER I. GENERAL RULES OF INTERPRETATION.
 II. JOINT OR SEVERAL OBLIGATIONS.
 III. CONDITIONAL OBLIGATIONS.
 IV. ALTERNATIVE OBLIGATIONS.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

SECTION 1423. General rules.....	290
----------------------------------	-----

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

SECTION 1427. Obligations, joint or several, etc.....	290
1428. When joint.....	290
1429. Contribution between joint parties.....	290

CHAPTER III.

CONDITIONAL OBLIGATIONS.

SECTION 1434. Obligation, when conditional	291
1435. Conditions, kinds of.....	291
1436. Conditions precedent.....	291
1437. Conditions concurrent.....	291
1438. Condition subsequent.....	291
1439. Performance, etc., of conditions, when essential.....	292
1440. When performance, etc., excused.....	292
1441. Impossible or unlawful conditions void.....	292
1442. Conditions involving forfeiture, how construed.....	292

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

SECTION 1448. Who has the right of selection.....	292
1449. Right of selection, how lost.....	293

CONTENTS.

xlv

SECTION 1450. Alternatives indivisible.....	293
1451. Nullity of one or more of alternative obligations.....	293

TITLE III.

TRANSFER OF OBLIGATIONS.

SECTION 1457. Burden of obligation, not transferable.....	293
1458. Rights arising out of obligation, transferable.....	294
1459. Non-negotiable instruments may be transferred.....	294
1460. Covenants running with land, what.....	294
1461. What covenants run with land.....	294
1462. Same.....	294
1463. Same.....	295
1464. What covenants run with land when assigns are named.....	295
1465. Who are bound by covenants.....	295
1466. Who are not.....	295
1467. Apportionment of covenants.....	295

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I. PERFORMANCE.

II. OFFER OF PERFORMANCE.

III. PREVENTION OF PERFORMANCE OR OFFER.

IV. ACCORD AND SATISFACTION.

V. NOVATION.

VI. RELEASE.

CHAPTER I.

PERFORMANCE.

SECTION 1473. Obligation extinguished by performance.....	296
1474. Performance by one of several joint debtors.....	296
1475. Performance to one of joint creditors.....	296
1476. Effect of directions by creditors.....	296
1477. Partial performance.....	297
1478. Payment, what.....	297
1479. Application of general performance.....	297

CHAPTER II.

OFFER OF PERFORMANCE.

SECTION 1485. Obligation extinguished by offer of performance.....	298
1486. Offer of partial performance.....	299
1487. By whom to be made.....	299
1488. To whom to be made.....	299

SECTION 1489. Where offer may be made.....	299
1490. When offer must be made.....	299
1491. Same.....	299
1492. Compensation after delay in performance.....	299
1493. Offer to be made in good faith.....	300
1494. Conditional offer.....	300
1495. Ability and willingness essential.	300
1496. Production of thing to be delivered, not necessary.....	300
1497. Thing offered, to be kept separate.....	301
1498. Performance of condition precedent.....	301
1499. Written receipts.....	301
1500. Extinction of pecuniary obligation.	301
1501. Objections to mode of offer.....	301
1502. Title to thing offered.....	301
1503. Custody of thing offered.....	302
1504. Effect of offer on accessories of obligation.	302
1505. Creditor's retention of thing which he refuses to accept.....	302

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

SECTION 1511. What excuses performance, etc.....	302
1512. Effect of prevention of performance.....	303
1513. Same.....	303
1514. Same.....	303
1515. Effect of refusal to accept performance before offer.....	303

CHAPTER IV.

ACCORD AND SATISFACTION.

SECTION 1521. Accord, what.....	304
1522. Effect of accord.....	304
1523. Satisfaction, what.....	304
1524. Accord of liquidated debt.....	304

CHAPTER V.

NOVATION.

SECTION 1530. Novation, what.....	305
1531. Modes of novation.....	305
1532. Consideration for novation presumed, when.....	306
1533. Intent presumed....	306
1534. Completed novation operates, how.....	306
1535. Novation a contract.....	306
1536. Rescission of novation.....	306

CONTENTS.

xlvii

CHAPTER VI.

RELEASE.

SECTION 1541. Obligation extinguished by release.....	307
1542. Certain claims not affected by general release.....	307
1543. Release of several joint debtors.....	307

PART II.

CONTRACTS.

- TITLE I. NATURE OF A CONTRACT.
- II. MANNER OF CREATING CONTRACTS.
- III. INTERPRETATION OF CONTRACTS.
- IV. UNLAWFUL CONTRACTS.
- V. EXTINCTION OF CONTRACTS.

TITLE I.

NATURE OF A CONTRACT.

- CHAPTER I. DEFINITION.
- II. PARTIES.
- III. CONSENT.
- IV. OBJECT.
- V. CONSIDERATION.

CHAPTER I.

DEFINITION.

SECTION 1549. Contract, what.....	309
1550. Essential elements of contract.....	309

CHAPTER II.

PARTIES.

SECTION 1556. Who may contract.....	310
1557. Minors, etc.....	310
1558. Identification of parties necessary.....	310
1559. When contract for benefit of third person may be enforced.....	310

CHAPTER III.

CONSENT.

SECTION 1565. Essentials of consent.....	311
1566. Consent, when voidable.....	311
1567. Apparent consent, when not free.....	311
1568. When deemed to have been obtained by fraud, etc.....	311
1569. Duress, what.....	312
1570. Menace, what.....	312
1571. Fraud, actual or constructive.....	312
1572. Actual fraud, what.....	312
1573. Constructive fraud.....	313
1574. Actual fraud a question of fact.....	313
1575. Undue influence, what.....	313
1576. Mistake, what.....	314
1577. Mistake of fact.....	314
1578. Mistake of law.....	315
1579. Mistake of foreign laws.....	315
1580. Mutuality of consent.....	315
1581. Communication of consent.....	315
1582. Mode of communicating acceptance of proposal.....	315
1583. When communication deemed complete.....	316
1584. Acceptance by performance of conditions.....	316
1585. Acceptance must be absolute.....	316
1586. Revocation of proposal.....	316
1587. Revocation, how made.....	316
1588. Ratification of contract, void for want of consent.....	317
1589. Assumption of obligation by acceptance of benefits.....	317

CHAPTER IV.

OBJECT OF A CONTRACT.

SECTION 1595. Object, what.....	317
1596. Requisites of object.....	317
1597. Impossibility, what.....	317
1598. When contract wholly void.....	317
1599. When contract partially void.....	318

CHAPTER V.

CONSIDERATION.

SECTION 1605. Good consideration, what.....	318
1606. How far legal or moral obligation is a good consideration.....	318
1607. Consideration lawful.....	319
1608. Effect of its illegality.....	319
1609. Consideration executed or executory.....	319
1610. Executory consideration.....	319
1611. How ascertained.....	320
1612. Effect of impossibility of ascertaining consideration.....	320
1613. Same.....	320

TITLE II.

MANNER OF CREATING CONTRACTS.

SECTION 1619. Contracts express or implied.....	321
1620. Express contract, what.....	321
1621. Implied contract, what.....	321
1622. What contracts may be oral.....	321
1623. Contract not in writing through fraud, may be enforced against fraudulent party.....	321
1624. What contracts must be written.....	321
1625. Effect of writing.....	322
1626. Contract in writing, takes effect when	322
1627. Provisions of chapter on transfers of real property.....	322
1628. Corporate seal, how affixed.....	323
1629. Provisions abolishing seals made applicable.....	323

TITLE III.

INTERPRETATION OF CONTRACTS.

SECTION 1635. Uniformity of interpretation.....	323
1636. Contracts, how to be interpreted.....	324
1637. Intention of parties, how ascertained.....	324
1638. Intention to be ascertained from language.....	324
1639. Interpretation of written contracts.....	324
1640. Writing, when disregarded.....	324
1641. Effect to be given to every part of contract.....	324
1642. Several contracts, when taken together.....	324
1643. Interpretation in favor of contract.....	325
1644. Words to be understood in usual sense.....	325
1645. Technical words.....	325
1646. Law of place.....	325
1647. Contracts explained by circumstances.....	325
1648. Contract restricted to its evident object.....	325
1649. Interpretation in sense in which promiser believed promisee to rely...	325
1650. Particular clause subordinate to general intent.....	325
1651. Contract, partly written and partly printed.....	326
1652. Repugnancies, how reconciled.....	326
1653. Inconsistent words rejected.....	326
1654. Words to be taken most strongly against whom.....	326
1655. Reasonable stipulations, when implied.....	326
1656. Necessary incidents implied.....	326
1657. Time of performance of contract.....	327
1658. Time, when of essence.....	327
1659. When joint and several.....	327
1660. Same.....	327
1661. Executed and executory contracts, what.....	327

CONTENTS.

TITLE IV.

UNLAWFUL CONTRACTS.

SECTION 1667. What is unlawful.....	328
1668. Certain contracts unlawful.....	328
1669. Penalties void.....	328
1670. Contract fixing damages, void.....	328
1671. Exception.....	328
1672. Restraints upon legal proceedings.....	328
1673. Contract in restraint of trade, void.....	329
1674. Exception in favor of sale of good will.....	329
1675. Exception in favor of partnership arrangements.....	329
1676. Contract in restraint of marriage, void.....	330

TITLE V.

EXTINCTION OF CONTRACTS.

- CHAPTER I. CONTRACTS, HOW EXTINGUISHED.
 II. RESCISSION.
 III. ALTERATION AND CANCELLATION.

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED

SECTION 1682. Contract, how extinguished.....	330
---	-----

CHAPTER II.

RESCISSION.

SECTION 1688. Rescission extinguishes contract.....	331
1689. When party may rescind.....	331
1690. When stipulations against right to rescind do not defeat it.....	331
1691. Rescission, how effected.....	331

CHAPTER III.

ALTERATION AND CANCELLATION.

SECTION 1697. Alteration by consent.....	332
1698. Sealed contracts, how modified.....	332
1699. Extinction by cancellation, etc.....	332
1700. Extinction by unauthorized alteration.....	333
1701. Alteration of duplicate, not to prejudice.....	333

CONTENTS.

ii

PART III.

OBLIGATIONS IMPOSED BY LAW.

Section 1708. Abstinence from injury.....	335
1709. Fraudulent deceit.....	335
1710. Deceit, what.....	335
1711. Deceit upon the public, etc.....	335
1712. Restoration of thing wrongfully acquired.....	336
1713. When demand necessary.....	336
1714. Responsibility for wilful acts, negligence, etc.....	336
1715. Other obligations.....	336

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

TITLE I. SALE.

II. EXCHANGE.

III. DEPOSIT.

IV. LOAN.

V. HIRING.

VI. SERVICE.

VII. CARRIAGE.

VIII. TRUST.

IX. AGENCY.

X. PARTNERSHIP.

XI. INSURANCE.

XII. INDEMNITY.

XIII. GUARANTY.

XIV. LIEN.

XV. NEGOTIABLE INSTRUMENTS.

XVI. GENERAL PROVISIONS.

TITLE I.

SALE.

CHAPTER I. GENERAL PROVISIONS.

II. RIGHTS AND OBLIGATIONS OF THE SELLER.

III. RIGHTS AND OBLIGATIONS OF THE BUYER.

IV. SALE BY AUCTION.

CONTENTS.

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE I. SALE.

II. AGREEMENTS FOR SALE.

III. FORM OF THE CONTRACT.

ARTICLE I.

SALE.

SECTION 1721. Sale, what.....	338
1722. Subject of sale.....	338

ARTICLE II.

AGREEMENTS FOR SALE.

SECTION 1726. Agreement for sale.....	338
1727. Agreement to sell.....	338
1728. Agreement to buy.....	338
1729. Agreement to sell and buy.....	339
1730. What may be the subject of the contract.....	339
1731. Agreement to sell real property.....	339
1732. Authority of agent to execute executory contract must be in writing..	339
1733. Form of grant required by such contract. Code Covenants.....	339
1734. Usual Common Law Covenants required by such contracts, when.....	339
1735. Form of such covenants.....	340

ARTICLE III.

FORM OF THE CONTRACT.

SECTION 1739. Contract for sale of personal property.....	340
1740. Contract to manufacture.....	341
1741. Contract for sale of real property	341

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE I. RIGHTS AND DUTIES BEFORE DELIVERY.

II. DELIVERY.

III. WARRANTY.

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

SECTION 1748. When seller must act as depository.....	342
1749. When seller may resell.....	342

CONTENTS.

iii

ARTICLE II.

DELIVERY.

SECTION 1753. Delivery on demand.....	342
1754. Delivery, where made	342
1755. Expense of transportation.....	342
1756. Notice of election as to delivery.....	343
1757. Buyer's directions as to manner of sending thing sold.....	343
1758. Delivery to be within reasonable hours.....	343
1759. Sale of personal property, when void.....	343

ARTICLE III.

WARRANTY.

SECTION 1763. Warranty, what.....	344
1764. No implied warranty in mere contract of sale.....	344
1765. Warranty of title to personal property.....	344
1766. Warranty on sale by sample.....	344
1767. When seller knows that buyer relies on his statements, etc.....	344
1768. Merchandise not in existence.....	345
1769. Manufacturer's warranty against latent defects.....	345
1770. Thing bought for particular purpose.....	345
1771. When thing cannot be examined by buyer.....	345
1772. Trade marks.....	346
1773. Other marks.....	346
1774. Warranty on sale of written instrument.....	346
1775. Warranty of provisions for domestic use.....	346
1776. Warranty on sale of good will.....	347
1777. Warranty upon judicial sale.....	347
1778. Effect of general warranty.....	347

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

SECTION 1784. Price, when to be paid.....	347
1785. Right to inspect goods.....	347
1786. Rights in case of breach of warranty.....	347

CHAPTER IV.

SALE BY AUCTION.

SECTION 1792. Sale by auction, what.....	348
1793. Sale, when complete.....	348
1794. Withdrawal of bid.....	348
1795. Sale under written conditions.....	348
1796. Rights of buyer upon sale without reserve.....	348
1797. By-bidding.....	348
1798. Auctioneer's memorandum of sale.....	349

CONTENTS.

TITLE II.

EXCHANGE.

SECTION 1804. Exchange, what.....	349
1805. Form of contract.....	349
1806. Parties have rights and obligations of sellers and buyers.....	349
1807. Warranty of money.....	350

TITLE III.

DEPOSIT.

- CHAPTER I. DEPOSIT IN GENERAL.
 II. DEPOSIT FOR KEEPING.
 III. DEPOSIT FOR EXCHANGE.

CHAPTER I.

DEPOSIT IN GENERAL.

- ARTICLE I. NATURE AND CREATION OF DEPOSIT.
 II. OBLIGATIONS OF THE DEPOSITARY.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

SECTION 1813. Deposit, kinds of.....	350
1814. Voluntary deposit, how made.....	350
1815. Involuntary deposit, how made.....	350
1816. Same	351
1817. Deposit for keeping, what.....	351
1818. Deposit for exchange, what.....	351

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

SECTION 1822. Depositary must deliver on demand.....	351
1823. No obligation to deliver without demand.....	351
1824. Place of delivery.....	352
1825. Notice to owner of adverse claim.....	352
1826. Notice to owner of thing wrongfully detained.....	352
1827. Delivery of thing owned jointly, etc.	352

CHAPTER II.

DEPOSIT FOR KEEPING.

- ARTICLE I. GENERAL PROVISIONS.
 II. GRATUITOUS DEPOSIT.
 III. STORAGE.
 IV. INNKEEPERS.
 V. FINDING.

CONTENTS.

lv

ARTICLE I.

GENERAL PROVISIONS.

SECTION 1833. Depositor must indemnify depositary.....	353
1834. Obligation of depositary of animals.....	353
1835. Obligations as to use of thing deposited.....	353
1836. Liability for damage arising from wrongful use.....	353
1837. Sale of thing in danger of perishing.....	353
1838. Injury to, or loss of thing deposited.....	354
1839. Service rendered by depositary.....	354
1840. Extent of his liability for negligence.....	354

ARTICLE II.

GRATUITOUS DEPOSIT.

SECTION 1844. Gratuitous deposit, what... ..	354
1845. Nature of involuntary deposit.....	354
1846. Degree of care required of gratuitous depositary.....	354
1847. His duties cease, when	354

ARTICLE III.

STORAGE.

SECTION 1851. Deposit for hire.....	355
1852. Degree of care required of depositary for hire.....	355
1853. Rate of compensation for fraction of a week, etc.....	355
1854. Termination of deposit.....	355
1855. Same.....	355

ARTICLE IV.

INNKEEPERS.

SECTION 1859. Innkeeper's liability.....	356
1860. How exempted from liability.....	356

ARTICLE V.

FINDING.

SECTION 1864. Obligation of finder.....	356
1865. Finder to notify owner.....	357
1866. Claimant to prove ownership.....	357
1867. Reward, etc., to finder.....	357
1868. Finder may put thing found on storage.....	357
1869. When finder may sell the thing found.....	357
1870. How sale is to be made	357
1871. Surrender of thing to the finder.....	358
1872. Thing abandoned.....	358

CHAPTER III.

DEPOSIT FOR EXCHANGE.

SECTION 1878. Relations of the parties.....	358
---	-----

TITLE IV.

LOAN.

- CHAPTER I. LOAN FOR USE.
 II. LOAN FOR EXCHANGE.
 III. LOAN OF MONEY.

CHAPTER I.

LOAN FOR USE.

SECTION 1884. Loan, what.....	359
1885. Title to property lent.....	359
1886. Care required of borrower.....	359
1887. Same.....	359
1888. Degree of skill.....	359
1889. Borrower, when to repair injuries.....	359
1890. Use of thing lent.....	359
1891. Relending, forbidden.....	359
1892. Borrower, when to bear expenses.....	360
1893. Lender liable for defects.....	360
1894. Lender may require return of thing lent.....	360
1895. When returnable without demand.....	360
1896. Place of return.....	360

CHAPTER II.

LOAN FOR EXCHANGE.

SECTION 1902. Loan for exchange, what.....	361
1903. Same.....	361
1904. Title to property lent.....	361
1905. Contract cannot be modified by lender.....	361
1906. Certain sections applicable.....	361

CHAPTER III.

LOAN OF MONEY.

SECTION 1912. Loan of money.....	362
1913. Loan to be repaid in current money.....	362
1914. Loan may be for reward.....	362
1915. Interest, what.....	362
1916. Annual rate.....	362
1917. Legal interest.....	362
1918. Same.....	362
1919. Interest becomes part of principal, when.....	363
1920. Interest on judgment.....	363

TITLE V.

HIRING.

- CHAPTER I. HIRING IN GENERAL.
 II. HIRING OF REAL PROPERTY.
 III. HIRING OF PERSONAL PROPERTY.

CHAPTER I.

HIRING IN GENERAL.

SECTION 1925. Hiring, what.....	363
1926. Products of thing.....	364
1927. Quiet possession.....	364
1928. Degree of care, etc., on part of hirer.....	364
1929. Must repair injuries, etc.....	364
1930. Thing let for a particular purpose.....	364
1931. When letter may terminate the hiring.....	364
1932. When hirer may terminate the hiring.....	364
1933. When hiring terminates.....	365
1934. When terminated by death, etc., of party.....	365
1935. Apportionment of hire.....	365

CHAPTER II.

HIRING OF REAL PROPERTY.

SECTION 1941. Lessor to make dwelling house fit for its purpose.....	365
1942. When lessee may make repairs, etc.....	366
1943. Term of hiring when no limit is fixed.....	366
1944. Hiring of lodgings for indefinite term.....	366
1945. Renewal of lease by lessee's continued possession.....	366
1946. Notice to quit.....	366
1947. Rent, when payable.....	367
1948. Tenant must deliver notice served on him.....	367
1949. Letting parts of rooms forbidden.....	367

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

SECTION 1955. Obligations of letter of personal property.....	368
1956. Ordinary expenses.....	368
1957. Extraordinary expenses.....	368
1958. Return of thing hired.....	368
1959. Charter party, what.....	368

TITLE VI.

SERVICE.

- CHAPTER I. SERVICE WITH EMPLOYMENT.
 II. PARTICULAR EMPLOYMENTS.
 III. SERVICE WITHOUT EMPLOYMENT.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

- ARTICLE I. DEFINITION OF EMPLOYMENT.
 II. OBLIGATIONS OF THE EMPLOYER.
 III. OBLIGATIONS OF THE EMPLOYÉ.
 IV. TERMINATION OF EMPLOYMENT.

ARTICLE I.

DEFINITION OF EMPLOYMENT.

SECTION 1965. Employment, what.	369
--------------------------------------	-----

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

SECTION 1969. When employer must indemnify employé.....	369
1970. When not.....	369
1971. Employer to indemnify for his own negligence	370

ARTICLE III.

OBLIGATIONS OF THE EMPLOYÉ.

SECTION 1975. Duties of gratuitous employé.....	370
1976. Same.....	370
1977. Same.....	371
1978. Duties of employé for reward.....	371
1979. Duties of employé for his own benefit	371
1980. Contracts for service limited to two years.....	371
1981. Employé must obey employer.....	371
1982. Employé to conform to usage.....	372
1983. Degree of skill required.....	372
1984. Must use what skill he has.....	372
1985. What belongs to employer.....	372
1986. Duty to account.....	372
1987. Employé not bound to deliver without demand	373
1988. Preference to be given to employers.....	373
1989. Responsibility of employé for substitute.....	373
1990. Responsibility for negligence... ..	373
1991. Surviving employé.....	373
1992. Confidential employment.....	373

CONTENTS.

lix

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

SECTION 1996. Termination by death, etc., of employer.....	374
1997. Employment, how terminated	374
1998. Continuance of service in certain cases.....	374
1999. Termination at will	374
2000. Termination by employer for fault.....	375
2001. Termination by employé for fault.....	375
2002. Compensation of employé dismissed for cause.....	375
2003. Compensation of employé leaving for cause.....	375

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I. MASTER AND SERVANT.

I. AGENTS.

III. FACTORS.

IV. SHIPMASTERS.

V. MATES AND SEAMEN.

VI. SHIPS' MANAGERS.

ARTICLE I.

MASTER AND SERVANT.

SECTION 2009. Servant, what.....	376
2010. Term of hiring.....	376
2011. Same.....	376
2012. Renewal of hiring	376
2013. Time of service.....	376
2014. Servant to pay over without demand.....	376
2015. When servant may be discharged.....	377

ARTICLE II.

AGENTS.

SECTION 2019. Agent to conform to his authority.....	377
2020. Must keep his principal informed.....	377
2021. Collecting agent.....	377
2022. Responsibility of sub-agent.....	377

ARTICLE III.

FACTORS.

SECTION 2026. Factor, what.....	378
2027. Obedience required from factor	378
2028. Sales on credit	378
2029. Liability of factor under guaranty commission.....	378
2030. Factor cannot relieve himself from liability.....	378

CONTENTS.

ARTICLE IV.

SHIPMASTERS.

SECTION 2034. Appointment of master.....	379
2035. When must be on board.....	379
2036. Pilotage.....	379
2037. Power of master over seamen.....	379
2038. Power of master over passengers.....	379
2039. Impressing private stores.....	379
2040. When may abandon the ship.....	380
2041. Duties on abandonment.....	380
2042. When master cannot trade on his own account.....	380
2043. Care and diligence.....	380
2044. Authority of master.....	380

ARTICLE V.

MATES AND SEAMEN.

SECTION 2048. Mate, what.....	381
2049. Seamen, what.....	381
2050. Mate and seamen, how engaged and discharged.....	381
2051. Unseaworthy vessel.....	381
2052. Seamen not to lose wages or lien by agreement.....	381
2053. Special agreement with seamen.....	381
2054. Wages depend on freightage.....	382
2055. When wages, etc., begin.....	382
2056. Wages, where voyage is broken up before departure.....	382
2057. Wrongful discharge.....	382
2058. Wages, when not lost by wreck.....	382
2059. Certificate.....	382
2060. Disabled seamen.....	383
2061. Maintenance of seamen during sickness.....	383
2062. Death on the voyage.....	383
2063. Theft, etc., forfeits wages.....	383
2064. Seamen cannot ship goods.....	383
2065. Embezzlement and injuries.....	383
2066. Law governing seamen.....	383

ARTICLE VI.

SHIPS' MANAGERS.

SECTION 2070. Manager, what.....	384
2071. Duties of manager.....	384
2072. Compensation.....	384

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

SECTION 2078. Voluntary interference with property.....	384
2079. Salvage.....	385

TITLE VII.

CARRIAGE.

- CHAPTER I. CARRIAGE IN GENERAL.
- II. CARRIAGE OF PERSONS.
- III. CARRIAGE OF PROPERTY.
- IV. CARRIAGE OF MESSAGES.
- V. COMMON CARRIERS.

CHAPTER I.

CARRIAGE IN GENERAL.

SECTION 2085. Contract of carriage.....	385
2086. Different kinds of carriers.....	385
2087. Marine and inland carriers, what.....	385
2088. Carriers by sea.....	386
2089. Obligations of gratuitous carriers.....	386
2090. Obligations of gratuitous carrier who has begun to carry.....	386

CHAPTER II.

CARRIAGE OF PERSONS.

- ARTICLE I. GRATUITOUS CARRIAGE.
- II. CARRIAGE FOR REWARD.

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

SECTION 2096. Degree of care required	386
---	-----

ARTICLE II.

CARRIAGE FOR REWARD.

SECTION 2100. General duties of carrier.....	386
2101. Vehicles	387
2102. Not to overload his vehicle.....	387
2103. Treatment of passengers.....	387
2104. Rate of speed and delays	387

CHAPTER III.

CARRIAGE AND PROPERTY.

- ARTICLE I. GENERAL DEFINITIONS.
- II. OBLIGATIONS OF THE CARRIER.
- III. BILL OF LADING.
- IV. FREIGHTAGE.
- V. GENERAL AVERAGE.

CONTENTS.

ARTICLE I.

GENERAL DEFINITIONS.

SECTION 2110. Freight, consignor, etc., what..... 387

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

SECTION 2114. Care and diligence required of carriers..... 388
 2115. Carrier to obey directions..... 388
 2116. Conflict of orders..... 388
 2117. Stowage, deviation, etc..... 388
 2118. Delivery of freight 389
 2119. Place of delivery..... 389
 2120. Obligations of carrier when freight is not delivered to consignee..... 389
 2121. How carrier may terminate his liability..... 389
 2122. When consignee cannot be found..... 389

ARTICLE III.

BILL OF LADING.

SECTION 2126. Bill of lading, what..... 390
 2127. Bill of lading negotiable..... 390
 2128. Same..... 390
 2129. Effect of bill of lading on rights, etc., of carrier..... 390
 2130. Bills of lading to be given to consignor..... 390
 2131. Carrier exonerated by delivery according to bill of lading..... 391
 2132. Carrier may demand surrender of bill of lading before delivery..... 391

ARTICLE IV.

FREIGHTAGE.

SECTION 2136. When freightage is to be paid..... 391
 2137. Consignor, when liable for freightage..... 391
 2138. Consignee, when liable..... 392
 2139. Natural increase of freight..... 392
 2140. Apportionment by contract. 392
 2141. Same..... 392
 2142. Apportionment according to distance..... 392
 2143. Freight carried further than agreed, etc..... 392
 2144. Carrier's lien for freightage..... 392

ARTICLE V.

GENERAL AVERAGE.

SECTION 2148. Jettison and general average, what..... 393
 2149. Order of jettison..... 393
 2150. By whom made..... 393
 2151. Loss, how borne..... 393
 2152. General average loss, how adjusted..... 393
 2153. Values, how ascertained 394
 2154. Things stowed on deck..... 394
 2155. Application of the foregoing rules..... 394

CONTENTS.

lxiii

CHAPTER IV.

CARRIAGE OF MESSAGES.

SECTION 2161. Obligations of carrier of messages.....	394
2162. Degree of care and diligence required.....	394

CHAPTER V.

COMMON CARRIERS.

- ARTICLE I. COMMON CARRIERS IN GENERAL.
- II. COMMON CARRIERS OF PERSONS.
- III. COMMON CARRIERS OF PROPERTY.
- IV. COMMON CARRIERS OF MESSAGES.

ARTICLE I.

COMMON CARRIERS IN GENERAL.

SECTION 2168. Common carrier, what.....	395
2169. Obligation to accept freight.....	395
2170. Obligation not to give preference.....	395
2171. What preferences he must give.....	395
2172. Starting.....	395
2173. Compensation.....	396
2174. Obligations of carrier altered only by agreement.....	396
2175. Certain agreements void.....	396
2176. Effect of written contract.....	396

ARTICLE II.

COMMON CARRIERS OF PERSONS.

SECTION 2180. Obligation to carry luggage.....	397
2181. Luggage, what.....	397
2182. Liability for luggage.....	397
2183. Luggage, how carried and delivered.....	397
2184. Obligation to provide vehicles.....	397
2185. Seats for passengers.....	398
2186. Regulations for conduct of business.....	398
2187. Fare, when payable.....	398
2188. Ejection of passengers.....	398
2189. Fare not payable after ejection.....	398
2190. Carrier's lien.....	398

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

SECTION 2194. Liability of inland carriers for loss.....	399
2195. When exemptions do not apply.....	399
2196. Liability for delay.....	399
2197. Liability of marine carriers.....	399

SECTION 2198. Same.....	399
2199. Perils of sea, what.....	399
2200. Consignor of valuables to declare their nature.....	399
2201. Delivery of freight beyond usual route.....	400
2202. Proof to be given in case of loss.....	400
2203. Carrier's services, other than carriage and delivery.....	400

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

SECTION 2207. Order of transmission of telegraphic messages.....	400
2208. Order in other cases.....	401
2209. Damages when message is refused or postponed.....	401

TITLE VIII.

TRUST.

CHAPTER I. TRUSTS IN GENERAL.

II. TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

CHAPTER I.

TRUSTS IN GENERAL.

ARTICLE I. NATURE AND CREATION OF A TRUST.

II. OBLIGATIONS OF TRUSTEES.

III. OBLIGATIONS OF THIRD PERSONS.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

SECTION 2215. Trusts classified.....	402
2216. Voluntary trust, what.....	402
2217. Involuntary trust, what.....	402
2218. Parties to the contract.....	402
2219. What constitutes one a trustee.....	403
2220. For what purpose a trust may be created.....	403
2221. Voluntary trust, how created as to trustor.....	403
2222. How created as to trustee.....	403
2223. Involuntary trustee, who is.....	403
2224. Involuntary trust resulting from negligence, etc.....	404

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

SECTION 2228. Trustee's obligation to good faith.....	404
2229. Trustee not to use property for his own profit.....	404
2230. Certain transactions forbidden.....	404
2231. Trustee's influence not to be used for his advantage.....	405
2232. Trustee not to assume a trust adverse to interest of beneficiary.....	405

CONTENTS.

lxv

SECTION 2233.	To disclose adverse interest.....	405
2234.	Trustee guilty of fraud, when.....	405
2235.	Presumption against trustees.....	405
2236.	Trustee mingling trust property with his own.....	405
2237.	Measure of liability for breach of trust.....	406
2238.	Same.....	406
2239.	Co-trustees, how far liable for each other.....	406

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

SECTION 2243.	Third person, when involuntary trustee.....	406
2244.	When third person must see to application of trust property.....	406

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE I. NATURE AND CREATION OF THE TRUST.

II. OBLIGATIONS OF TRUSTEES.

III. POWERS OF TRUSTEES.

IV. RIGHTS OF TRUSTEES.

V. TERMINATION OF THE TRUST.

VI. SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

SECTION 2250.	Who are trustees within scope of this chapter.....	407
2251.	Creation of trust.....	407
2252.	Trustee appointed by Court.....	407
2253.	Declaration of trust.....	407
2254.	Same.....	407

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

SECTION 2258.	Trustees must obey declaration of trust.....	408
2259.	Degree of care and diligence in execution of trust.....	408
2260.	Duty of trustee as to appointment of successor.....	408
2261.	Investment of money by trustee.....	408
2262.	Interest, simple or compound, on omission to invest trust moneys.....	409
2263.	Purchase by trustee of claims against trust fund.....	409

ARTICLE III.

POWERS OF TRUSTEES.

SECTION 2267.	Trustee's powers as agent.....	409
2268.	All must act.....	409
2269.	Discretionary powers.....	409

ARTICLE IV.

RIGHTS OF TRUSTEES.

SECTION 2273. Indemnification of trustee.....	410
2274. Compensation of trustee.....	410
2275. Involuntary trustee.....	410

ARTICLE V.

TERMINATION OF THE TRUST.

SECTION 2279. Trust, how extinguished.....	410
2280. Not revocable.....	410
2281. Trustee's office, how vacated.....	411
2282. Trustee, how discharged.....	411
2283. Removal by District Court.....	411

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

SECTION 2287. Vacant trusteeship filled by Court.....	411
2288. Survivorship between co-trustees.....	411
2289. District Court as trustee.....	412

TITLE IX.

AGENCY.

CHAPTER I. AGENCY IN GENERAL.
 II. PARTICULAR AGENCIES.

CHAPTER I.

AGENCY IN GENERAL.

ARTICLE I. DEFINITION OF AGENCY.	
II. AUTHORITY OF AGENTS.	
III. MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.	
IV. OBLIGATIONS OF AGENTS TO THIRD PERSONS.	
V. DELEGATION OF AGENCY.	
VI. TERMINATION OF AGENCY.	

ARTICLE I.

DEFINITION OF AGENCY.

SECTION 2295. Agency, what.....	413
2296. Who may appoint and who may be an agent.....	413
2297. Agents, general or special.....	413
2298. Agency, actual or ostensible.....	413
2299. Actual agency.....	413
2300. Ostensible agency.....	413

CONTENTS.

lxvii

ARTICLE II.

AUTHORITY OF AGENTS.

SECTION 2304. What authority may be conferred.....	414
2305. Agent may perform acts required of principal by Code.....	414
2306. Agent cannot have authority to defraud principal.....	414
2307. Creation of agency.....	414
2308. Consideration unnecessary.....	414
2309. Form of authority.....	414
2310. Ratification of agent's act.....	415
2311. Ratification of part of a transaction.....	415
2312. When ratification void.....	415
2313. Ratification not to work injury to third persons.....	415
2314. Rescission of ratification.....	415
2315. Measure of agent's authority.....	415
2316. Actual authority, what.....	415
2317. Ostensible authority, what.....	416
2318. Agent's authority as to persons having notice of restrictions upon it..	416
2319. Agent's necessary authority.....	416
2320. Agent's power to disobey instructions.....	416
2321. Authority to be construed by its specific, rather than by its general terms	416
2322. Exceptions to general authority.....	416
2323. What included in authority to sell personal property.....	417
2324. What included in authority to sell real property.....	417
2325. Authority of general agent to receive price of property.....	417
2326. Authority of special agent to receive price.....	417

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

SECTION 2330. Principal, how affected by acts of agent within the scope of his authority.....	417
2331. Principal, when bound by incomplete execution of authority.....	418
2332. Notice to agent, when notice to principal.....	418
2333. Obligation of principal when agent exceeds his authority.....	418
2334. For acts done under a merely ostensible authority.....	418
2335. When exclusive credit is given to agent.....	418
2336. Rights of person who deals with agent without knowledge of his agency.....	418
2337. Principal's responsibility for agent's negligence or omission.....	418
2338. Principal's responsibility for wrongs wilfully committed by the agent.	418

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

SECTION 2342. Warranty of authority.....	419
2343. Agent's responsibility to third persons.....	419
2344. Obligation of agent to surrender property to third person.....	420
2345. Agent not having capacity to contract.....	420

ARTICLE V.

DELEGATION OF AGENCY.

SECTION 2349. Agent's delegation of his powers.....	420
2350. Agent's unauthorized employment of sub-agent.....	420
2351. Sub-agent rightfully appointed, represents principal.....	420

ARTICLE VI.

TERMINATION OF AGENCY.

SECTION 2355. Termination of agency.....	421
2356. Same.....	421

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I. AUCTIONEERS.

II. FACTORS.

III. SHIPMASTERS AND PILOTS.

IV. SHIPS' MANAGERS.

ARTICLE I.

AUCTIONEERS.

SECTION 2362. Auctioneer's authority from the seller.....	421
• 2363. Auctioneer's authority from the bidder.....	422

ARTICLE II.

FACTORS.

SECTION 2367. Factor, what.....	422
2368. Actual authority of factor.....	422
2369. Ostensible authority.....	422

ARTICLE III.

SHIPMASTERS AND PILOTS.

SECTION 2373. Authority of shipmaster on behalf of shipowner.....	423
2374. Authority to borrow.....	423
2375. Authority on behalf of owners of cargo.....	423
2376. Power to make contracts.....	423
2377. Power to hypothecate.....	423
2378. Master's power to sell ship.....	424
2379. Master's power to sell cargo.....	424
2380. Authority to ransom ship.....	424
2381. Abandonment terminates master's power.....	424
2382. Personal liability for contracts concerning the ship.....	424
2383. Liability for acts of persons employed upon the ship.....	424
2384. Responsibility for negligence of pilot.....	424

CONTENTS.

lxix

ARTICLE IV.

SHIPS' MANAGERS.

SECTION 2338. What powers manager has.....	425
2339. What powers he has not.....	425

TITLE X.

PARTNERSHIP.

CHAPTER I. PARTNERSHIP IN GENERAL.

II. GENERAL PARTNERSHIP.

III. SPECIAL PARTNERSHIP.

IV. MINING PARTNERSHIP.

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I. WHAT CONSTITUTES A PARTNERSHIP.

II. PARTNERSHIP PROPERTY.

III. MUTUAL OBLIGATIONS OF PARTNERS.

IV. RENUNCIATION OF PARTNERSHIP.

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

SECTION 2395. Partnership, what.....	426
2396. Ship owners.....	426
2397. Formation of partnership.....	426

ARTICLE II.

PARTNERSHIP PROPERTY.

SECTION 2401. Partnership property, what.....	426
2402. Partners' interest in partnership property.....	426
2403. Partners share in profits and losses.....	426
2404. When division of losses implied.....	427
2405. Partner may require application of partnership property to payment of debts.....	427
2406. What property is partnership property by presumption.....	427

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 2410. Partners trustees for each other.....	427
2411. Good faith to be observed between them.....	427
2412. Mutual liability of partners to account.....	428
2413. No compensation for services to firm.....	428

CONTENTS.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

SECTION 2417. Renunciation of future profits exonerates from liability.....	423
2418. Effect of renunciation.....	423

CHAPTER II.

GENERAL PARTNERSHIP.

- ARTICLE I. WHAT IS A GENERAL PARTNERSHIP.
 II. POWERS AND AUTHORITY OF PARTNERS.
 III. MUTUAL OBLIGATIONS OF PARTNERS.
 IV. LIABILITY OF PARTNERS.
 V. TERMINATION OF PARTNERSHIP.
 VI. LIQUIDATION.
 VII. OF THE USE OF FICTITIOUS NAMES.

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

SECTION 2424. General partnership, what.....	429
--	-----

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

SECTION 2428. Power of majority of partners.....	429
2429. Authority of individual partner.....	429
2430. What authority partner has not.....	430
2431. Partner's acts in bad faith, when ineffectual.....	430

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 2435. Profits of individual partner.....	430
2436. In what business partner may not engage.....	430
2437. In what he may engage.....	431
2438. Must account to firm for profits.....	431

ARTICLE IV.

LIABILITY OF PARTNERS.

SECTION 2442. Liability of partners to third persons.....	431
2443. Liability for each other's acts as agents.....	431
2444. Liability of one held out as partner.....	431
2445. No one liable as partner unless held out as such.....	431

ARTICLE V.

TERMINATION OF PARTNERSHIP.

SECTION 2449. Duration of partnership.....	432
2450. Total dissolution of partnership.....	432

CONTENTS.

lxxi

SECTION 2451. Partial dissolution.....	432
2452. Partner entitled to dissolution.....	432
2453. Notice of termination.....	433
2454. Notice by change of name.....	433

ARTICLE VI.

LIQUIDATION.

SECTION 2458. Powers of partners after dissolution.....	433
2459. Who may act in liquidation.....	433
2460. Who may not act in liquidation.....	434
2461. Powers of partners in liquidation.....	434
2462. What partner may do in liquidation.....	434

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

SECTION 2466. Fictitious name.....	434
2467. Style of foreign partnership.....	434
2468. Continuation of style of firm having foreign business relations.....	435
2469. Certificates stating names, etc., what to contain, and to be filed and published.....	435
2470. Register of such firms to be kept by County Clerk.....	435
2471. Certified copies of register, and proof of publication, to be evidence...	435

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I. FORMATION OF PARTNERSHIP.

II. POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

III. LIABILITY OF PARTNERS.

IV. ALTERATION AND DISSOLUTION OF THE PARTNERSHIP.

ARTICLE I.

FORMATION OF PARTNERSHIP.

SECTION 2477. Formation of special partnership.....	436
2478. Of what to consist.....	436
2479. Certified statement.....	436
2480. Acknowledged and recorded. False statement.....	437
2481. Affidavit as to sums contributed.....	437
2482. No partnership until compliance.....	437
2483. Certificate to be published.....	437
2484. Affidavit of publication filed.....	437
2485. Renewal of special partnership.....	438

ARTICLE II.

POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

SECTION 2489. Who to do business.....	438
2490. Special partners may advise.....	438
2491. May loan money. Insolvency.....	438
2492. General partners may sue and be sued.....	438
2493. Withdrawal of capital.....	439
2494. Interest and profits.....	439
2495. Result of withdrawing capital.....	439
2496. Preferential transfer void.....	439

ARTICLE III.

LIABILITY OF PARTNERS.

SECTION 2500. Liability of partners.....	439
2501. Of special partners.....	439
2502. Liability for unintentional act.....	440
2503. Who may question existence of special partnership.....	440

ARTICLE IV.

ALTERATION AND DISSOLUTION.

SECTION 2507. When special partnership becomes general.....	440
2508. How new special partners may be admitted.....	441
2509. Dissolution of special partnerships. Notice.....	441
2510. The name of a special partner not used, unless.....	441

CHAPTER IV.

MINING PARTNERSHIPS.

SECTION 2516. Special mining partnerships formed as other special partnerships. Additional statement in certificate.....	442
2517. Meeting to levy assessments, how called and how proved to be valid.....	442
2518. How notices shall be served and proof thereof made.....	442
2519. Assessment, what and how levied. When to be paid, and shares, how forfeited and to whom.....	443
2520. How, on what notice, and by whom sales to be made. Deed made and what it is proof of.....	443
2521. Assessments not to exceed certain amount. Additional assessment, when and how levied.....	444

TITLE XI.

INSURANCE.

CHAPTER I. INSURANCE IN GENERAL.

II. MARINE INSURANCE.

III. FIRE INSURANCE.

IV. LIFE AND HEALTH INSURANCE.

CHAPTER I.

INSURANCE IN GENERAL.

ARTICLE I. DEFINITION OF INSURANCE.

- II. WHAT MAY BE INSURED.
- III. PARTIES.
- IV. INSURABLE INTEREST.
- V. CONCEALMENT AND REPRESENTATION.
- VI. THE POLICY.
- VII. WARRANTIES.
- VIII. PREMIUMS.
- IX. LOSS.
- X. NOTICE OF LOSS.
- XI. DOUBLE INSURANCE.
- XII. RE-INSURANCE.

ARTICLE I.

DEFINITION OF INSURANCE.

SECTION 2527. Insurance, what.....	445
------------------------------------	-----

ARTICLE II.

WHAT MAY BE INSURED.

SECTION 2531. What events may be insured against.....	445
2532. Insurance of lottery or lottery prize unauthorized.....	445
2533. Usual kinds of insurance.....	445
2534. All subject to this chapter.....	445

ARTICLE III.

PARTIES TO THE CONTRACT.

SECTION 2538. Designation of parties.....	446
2539. Who may insure.....	446
2540. Who may be insured.....	446
2541. Assignment to mortgagee of thing insured.....	446
2542. New contract between insurer and assignee.....	446

ARTICLE IV.

INSURABLE INTEREST.

SECTION 2546. Insurable interest, what.....	447
2547. In what may consist.....	447
2548. Interest of carrier or depositary.....	447
2549. Mere expectancies.....	447
2550. Measure of interest in property.....	447
2551. Insurance without interest, illegal.....	448
2552. When interest must exist.....	448
2553. Effect of transfer.....	448
2554. Transfer after loss.....	448

SECTION 2555. Exception in the case of several subjects in one policy.....	448
2556. In case of the death of the insurer.....	448
2557. In the case of transfer between co-tenants.....	448

ARTICLE V.

CONCEALMENT AND REPRESENTATIONS.

SECTION 2561. Concealment, what.....	449
2562. Effect of concealment.....	449
2563. What must be disclosed.....	449
2564. Matters which need not be communicated without inquiry.....	450
2565. Test of materiality.....	450
2566. Matters which each is bound to know.....	450
2567. Waiver of communication.....	450
2568. Interest of insured.....	450
2569. Fraudulent warranty.....	450
2570. Matters of opinion.....	451
2571. Representation, what.....	451
2572. When made.....	451
2573. How interpreted.....	451
2574. Representation as to future.....	451
2575. How may affect policy.....	451
2576. When may be withdrawn.....	451
2577. Time intended by representation.....	451
2578. Representing information.....	451
2579. Falsity.....	452
2580. Effect of falsity.....	452
2581. Materiality.....	452
2582. Application of provisions of this article.....	452

ARTICLE VI.

THE POLICY.

SECTION 2586. Policy, what.....	452
2587. What must be specified in a policy.....	453
2588. Whose interest is covered.....	453
2589. Insurance by agent or trustee.....	453
2590. Insurance by part owner.....	453
2591. General terms.....	453
2592. Successive owners.....	453
2593. Transfer of the thing insured.....	453
2594. Open and valued policies.....	451
2595. Open policy, what.....	454
2596. Valued policy, what.....	454
2597. Running policy, what.....	454
2598. Effect of receipt.....	454
2599. Agreement not to transfer.....	454

ARTICLE VII.

WARRANTIES.

SECTION 2603. Warranty, express or implied.....	455
2604. Form.....	455

CONTENTS.

lxxv

SECTION 2605.	Warranty must be in policy.....	455
	2606. Past, present and future warranties.....	455
	2607. Warranty as to past or present.....	455
	2608. Warranty as to the future.....	455
	2609. Performance excused.....	455
	2610. What acts avoid the policy.....	455
	2611. Policy may provide for avoidance.....	455
	2612. Breach without fraud.....	456

ARTICLE VIII.

PREMIUM.

SECTION 2616.	When premium is earned.....	456
	2617. Return of premium.....	456
	2618. When none allowed.....	456
	2619. Return for fraud.....	456
	2620. Over-insurance by several insurers.....	457
	2621. Contribution.....	457
	2622. Proportionate contribution.....	457

ARTICLE IX.

LOSS.

SECTION 2626.	Perils, remote and proximate.....	457
	2627. Loss incurred in rescue from peril.....	458
	2628. Excepted perils.....	458
	2629. Negligence and fraud.....	458

ARTICLE X.

NOTICE OF LOSS.

SECTION 2633.	Notice of loss.....	458
	2634. Preliminary proofs.....	458
	2635. Waivers of defects in notice, etc.....	458
	2636. Waiver of delay.....	459
	2637. Certificate, when dispensed with.....	459

ARTICLE XI.

DOUBLE INSURANCE.

SECTION 2641.	Double insurance.....	459
	2642. Contribution in case of double insurance.....	459

ARTICLE XII.

RE-INSURANCE.

SECTION 2646.	Re-insurance, what.....	460
	2647. Disclosures required.....	460
	2648. Re-insurance presumed to be against liability.....	460
	2649. Original insured has no interest.....	460

CONTENTS.

CHAPTER II.

MARINE INSURANCE.

ARTICLE I. DEFINITION OF MARINE INSURANCE.

II. INSURABLE INTEREST.

III. CONCEALMENT.

IV. REPRESENTATIONS.

V. IMPLIED WARRANTIES.

VI. THE VOYAGE, AND DEVIATION.

VII. LOSS.

VIII. ABANDONMENT.

IX. MEASURE OF INDEMNITY.

ARTICLE I.

DEFINITION OF MARINE INSURANCE.

SECTION 2655. Marine insurance, what.....	461
---	-----

ARTICLE II.

INSURABLE INTEREST.

SECTION 2659. Insurable interest in a ship.....	461
2660. Interest reduced by bottomry.....	461
2661. Freightage, what.....	461
2662. Expected freightage.....	461
2663. Interest in expected freightage, what.....	462
2664. Insurable interest in profits.....	462
2665. Insurable interest of charterer.....	462

ARTICLE III.

CONCEALMENT.

SECTION 2669. Information must be communicated.....	462
2670. Material information.....	462
2671. Presumption of knowledge of loss.....	463
2672. Concealments which only affect the risk in question.....	463

ARTICLE IV.

REPRESENTATIONS.

SECTION 2676. Effect of intentional falsity.....	463
2677. Representation of expectation.....	463

ARTICLE V.

IMPLIED WARRANTIES.

SECTION 2681. Warranty of seaworthiness.....	464
2682. Seaworthiness, what.....	464
2683. At what time seaworthiness must exist.....	464
2684. What things are required to constitute seaworthiness.....	464
2685. Different degrees of seaworthiness at different stages of the voyage....	464

CONTENTS.

lxxvii

SECTION 2686. Unseaworthiness during the voyage.....	465
2687. Seaworthiness for purposes of insurance on cargo.....	465
2688. Neutral papers.....	465

ARTICLE VI.

THE VOYAGE AND DEVIATION.

SECTION 2692. Voyage insured, how determined.....	465
2693. Course of sailing, how determined.....	465
2694. Deviation, what.....	465
2695. When proper.....	466
2696. When improper.....	466
2697. Deviation exonerates the insurer.....	466

ARTICLE VII.

LOSS.

SECTION 2701. Total and partial loss.....	466
2702. Partial loss.....	466
2703. Actual and constructive total loss.....	467
2704. Actual total loss, what.....	467
2705. Constructive total loss.....	467
2706. Presumed actual loss.....	467
2707. Insurance on cargo, etc., when voyage is broken up.....	467
2708. Cost of reshipment, etc.....	467
2709. When insured is entitled to payment.....	467
2710. Abandonment of goods on insurance of profits.....	468
2711. Average loss.....	468
2712. Insurance against total loss.....	468

ARTICLE VIII.

ABANDONMENT.

SECTION 2716. Abandonment, what.....	468
2717. When insured may abandon.....	469
2718. Must be unqualified.....	469
2719. When may be made.....	469
2720. Abandonment may be defeated.....	469
2721. How made.....	469
2722. Requisites of notice.....	470
2723. No other cause can be relied on.....	470
2724. Effect.....	470
2725. Waiver of formal abandonment.....	470
2726. Agents of the insured become agents of the insurer.....	470
2727. Acceptance not necessary.....	470
2728. Acceptance conclusive.....	470
2729. Accepted abandonment, irrevocable.....	470
2730. Freightage, how affected by abandonment of ship.....	470
2731. Refusal to accept.....	471
2732. Omission to abandon.....	471

ARTICLE IX.

MEASURE OF INDEMNITY.

SECTION 2736. Valuation, when conclusive.....	471
2737. Partial loss.....	471
2738. Profits.....	472
2739. Valuation apportioned.....	472
2740. Valuation applied to profits.....	472
2741. Estimating loss under an open policy.....	472
2742. Arrival of thing damaged.....	472
2743. Labor and expenses.....	473
2744. General average.....	473
2745. Contribution.....	473
2746. One-third new for old.....	473

CHAPTER III.

FIRE INSURANCE.

SECTION 2752. False representation.....	474
2753. Alteration increasing risk.....	474
2754. Alteration not increasing risk.....	474
2755. Acts of the insured.....	474
2756. Measure of indemnity.....	474

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

SECTION 2762. Insurance upon life, when payable.....	474
2763. Insurable interest.....	475
2764. Assignee, etc., of life policy need have no interest.....	475
2765. Notice of transfer.....	475
2766. Measure of indemnity.....	475

TITLE XII.

INDEMNITY.

SECTION 2772. Indemnity, what.....	476
2773. Indemnity for a future wrongful act, void.....	476
2774. Indemnity for a past wrongful act, valid.....	476
2775. Indemnity extends to acts of agents.....	476
2776. Indemnity to several.....	476
2777. Person indemnifying, liable jointly or severally with person indemnified.....	476
2778. Rules for interpreting agreement of indemnity.....	477
2779. When person indemnifying is a surety.....	477
2780. Bail, what.....	478
2781. How regulated.....	478

TITLE XIII.

GUARANTY.

CHAPTER I. GUARANTY IN GENERAL.
II. SURETYSHIP.

CHAPTER I.

GUARANTY IN GENERAL.

- ARTICLE I. DEFINITION OF GUARANTY.
 II. CREATION OF GUARANTY.
 III. INTERPRETATION OF GUARANTY.
 IV. LIABILITY OF GUARANTORS.
 V. CONTINUING GUARANTY.
 VI. EXONERATION OF GUARANTORS.

ARTICLE I.

DEFINITION OF GUARANTY.

SECTION 2787. Guaranty, what.....	478
2788. Knowledge of principal not necessary to creation of guaranty.....	479

ARTICLE II.

CREATION OF GUARANTY.

SECTION 2792. Necessity of a consideration.....	479
2793. Guaranty to be in writing, etc.....	479
2794. Engagement to answer for obligation of another, when deemed original.....	480
2795. Acceptance of guaranty.....	481

ARTICLE III.

INTERPRETATION OF GUARANTY.

SECTION 2799. Guaranty of incomplete contract.....	481
2800. Guaranty that an obligation is good or collectible.....	481
2801. Recovery upon such guaranty.....	481
2802. Guarantor's liability upon such guaranty.....	482

ARTICLE IV.

LIABILITY OF GUARANTORS.

SECTION 2806. Guaranty, how construed.....	483
2807. Liability upon guaranty of payment or performance.....	483
2808. Liability upon guaranty of a conditional obligation.....	483
2809. Obligation of guarantor cannot exceed that of the principal.....	483
2810. Guarantor not liable on an illegal contract.....	483

ARTICLE V.

CONTINUING GUARANTY.

SECTION 2814. Continuing guaranty, what.....	484
2815. Revocation.....	484

ARTICLE VI.

EXONERATION OF GUARANTORS.

SECTION 2819. What dealings with debtor exonerate guarantor.....	484
2820. Void promises.....	484
2821. Rescission of alteration.....	484
2822. Part performance.....	485
2823. Delay of creditor does not discharge guarantor.....	485
2824. Guarantor indemnified by the debtor, not exonerated.....	485
2825. Discharge of principal by act of law does not discharge guarantor....	485

CHAPTER II.

SURETYSHIP.

- ARTICLE I. WHO ARE SURETIES.
 II. LIABILITY OF SURETIES.
 III. RIGHTS OF SURETIES.
 IV. RIGHTS OF CREDITORS.
 V. LETTER OF CREDIT.

ARTICLE I.

WHO ARE SURETIES.

SECTION 2831. Surety, what	485
2832. Apparent principal may show that he is surety.....	486

ARTICLE II.

LIABILITY OF SURETIES.

SECTION 2836. Limit of surety's obligation.....	487
2837. Rules of interpretation.....	487
2838. Judgment against surety does not alter the relation.....	487
2839. Surety exonerated by performance or offer of performance.....	487
2840. Surety discharged by certain acts of the creditor.....	487

ARTICLE III.

RIGHTS OF SURETIES.

SECTION 2844. Surety has rights of guarantor.....	488
2845. Surety may require the creditor to proceed against the principal.....	488
2846. Surety may compel principal to perform obligation, when due.....	488
2847. A principal bound to reimburse his surety.....	488
2848. The surety acquires the right of the creditor.....	488
2849. Surety entitled to benefit of securities held by creditor.....	488
2850. The property of principal to be taken first.....	488

CONTENTS.

lxxxii

ARTICLE IV.

RIGHTS OF CREDITORS.

SECTION 2854. Creditor entitled to benefit of securities held by surety..... 489

ARTICLE V.

LETTER OF CREDIT.

SECTION 2858. Letter of credit, what..... 489
2859. How addressed..... 489
2860. Liability of the writer..... 489
2861. Letters of credit either general or special..... 489
2862. Nature of general letter of credit..... 490
2863. Extent of general letter of credit..... 490
2864. A letter of credit may be a continuing guaranty..... 490
2865. When notice to the writer necessary..... 490
2866. The credit given must agree with the terms of the letter..... 490

TITLE XIV.

LIEN.

CHAPTER I. LIENS IN GENERAL.

- II. MORTGAGE.
III. PLEDGE.
IV. BOTTOMRY.
V. RESPONDENTIA.
VI. OTHER LIENS.
VII. STOPPAGE IN TRANSIT.

CHAPTER I.

LIENS IN GENERAL.

ARTICLE I. DEFINITION OF LIENS.

- II. CREATION OF LIENS.
III. EFFECT OF LIENS.
IV. PRIORITY OF LIENS.
V. REDEMPTION FROM LIENS.
VI. EXTINCTION OF LIENS.

ARTICLE I.

DEFINITION OF LIENS.

SECTION 2872. Lien, what..... 491
2873. Liens, general or special..... 492
2874. General lien, what..... 492
2875. Special lien, what..... 492
2876. Prior liens..... 492
2877. Contracts subject to provisions of this chapter..... 492

lc

CONTENTS.

ARTICLE II.

CREATION OF LIENS.

SECTION 2881. Lien, how created.....	492
2882. No lien for claim not due.....	492
2883. Lien on future interest.....	493
2884. Lien may be created by contract.....	493

ARTICLE III.

EFFECT OF LIENS.

SECTION 2888. Lien, or contract for lien, transfers no title.....	493
2889. Certain contracts, void.....	493
2890. Creation of lien does not imply personal obligation.....	493
2891. Extent of lien.....	493
2892. Existence of lien does not affect the right of creditor.....	494
2893. Holder of lien not entitled to compensation.....	494

ARTICLE IV.

PRIORITY OF LIENS.

SECTION 2897. Priority of liens.....	494
2898. Priority of mortgage for price.....	494
2899. Order of resort to different funds.....	494

ARTICLE V.

REDEMPTION FROM LIEN.

SECTION 2903. Right to redem.....	495
2904. Rights of inferior lienor.....	495
2905. Redemption from lien, how made.....	495

ARTICLE VI.

EXTINCTION OF LIENS.

SECTION 2909. Lien deemed accessory to the act whose performance it secures.....	496
2910. Extinction by sale or conversion.....	496
2911. Lien not extinguished by lapse of time under statute of limitation.....	496
2912. Apportionment of lien.....	496
2913. When restoration extinguishes lien.....	496

CHAPTER II.

MORTGAGE.

ARTICLE I. MORTGAGES IN GENERAL.
II. MORTGAGE OF REAL PROPERTY.
III. MORTGAGE OF PERSONAL PROPERTY.

CONTENTS.

lxxxiii

ARTICLE I.

MORTGAGES IN GENERAL.

SECTION	2919. Mortgage, what.....	497
	2920. Lien of a mortgage, when special.....	497
	2921. Transfer of interest, when deemed a mortgage.....	497
	2922. Provisions of this chapter do not affect bottomry or respondentia... ..	498
	2923. Transfer made subject to defeasance, may be proved.....	498
	2924. What interests may be mortgaged.....	498
	2925. Property adversely held may be mortgaged.....	498
	2926. Power of sale.....	498
	2927. Power of sale, how executed.....	498
	2928. On what a lien.....	498
	2929. Mortgage of thing held adversely.....	498
	2930. Mortgage does not entitle mortgagee to possession.....	499
	2931. Foreclosure.....	499
	2932. Waste	499

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

SECTION	2936. Mortgage of real property defined.....	499
	2937. How created.....	500
	2938. Form of mortgage.....	500
	2939. Mortgage not a personal obligation.....	500
	2940. By whom paid after property passes by succession or will.....	501
	2941. How acknowledged and recorded.....	501
	2942. Chaps. IV and V, on recording, etc., applied.....	501
	2943. Encumbrances protected by recording laws.....	501
	2944. Encumbrances presumed to be acquired in good faith, etc.....	501
	2945. Subsequently acquired title inures to mortgagee.....	501
	2946. What must be recorded as mortgage.....	502
	2947. Recording assignment of mortgage.....	502
	2948. Mortgage, how discharged.....	502
	2949. Same.	502
	2950. Same.	502
	2951. Penalty for not acknowledging satisfaction.....	503

ARTICLE III.

PERSONAL MORTGAGE.

SECTION	2956. Mortgage on personal property, a personal mortgage.....	504
	2957. Property subject to.....	504
	2958. Same.....	504
	2959. How created.....	504
	2960. Power of attorney to execute.....	504
	2961. Form of.....	504
	2962. Must be authenticated.....	505
	2963. Must be recorded....	505
	2964. Other sections on recording made applicable.....	506
	2965. Recorded in different places.....	506
	2966. Time allowed for travel to Recorder's office.....	506
	2967. Property in transit exempt.....	506

SECTION 2968. Property of common carrier, where recorded.....	506
2969. Property exempt from operation of the mortgage, when.....	506
2970. Same.....	507
2971. Same.....	507
2972. Recorded mortgage, notice.....	507
2973. Personal mortgage, how satisfied on record.....	507
2974. How satisfied.....	507
2975. Mortgagee may foreclose.....	508
2976. Creditors of mortgagee, remedy.....	508
2977. Creditors of mortgagee, remedy.....	508
2978. Does not apply to ships.....	508

CHAPTER III.

PLEDGE.

SECTION 2986. Pledge, what.....	509
2987. When contract is to be deemed a pledge.....	509
2988. Delivery essential to validity of pledge.....	510
2989. Increase of thing.....	510
2990. Lienor may pledge property to extent of his lien.....	510
2991. Real owner cannot defeat pledge of property transferred to apparent owner for purpose of pledge.....	510
2992. Pledge lender, what.....	510
2993. Pledge holder, what.....	510
2994. When pledge lender may withdraw property pledged.....	510
2995. Obligations of pledge holder.....	510
2996. Pledge holder must enforce rights of pledgee.....	511
2997. Obligation of pledgee and pledge holder, for reward.....	511
2998. Gratuitous pledge holder.....	511
2999. Debtor's misrepresentation of value of pledge.....	511
3000. When pledgee may sell.....	511
3001. When pledgee must demand performance.....	511
3002. Notice of sale to pledgee.....	511
3003. Waiver of notice of sale.....	512
3004. Waiver of demand.....	512
3005. Sale must be by auction.....	512
3006. Pledgee's sale of securities.....	512
3007. Sale on the demand of the pledgee.....	512
3008. Surplus to be paid to pledgee.....	512
3009. Same.....	513
3010. Pledgee's purchase of property pledged.....	513
3011. Pledgee may foreclose right of redemption.....	513

CHAPTER IV.

BOTTOMRY.

SECTION 3017. Bottomry, what.....	514
3018. Owner of ship may hypothecate.....	514
3019. When master may hypothecate ship.....	515
3020. Same.....	515

CONTENTS.

Lxxxv

SECTION	3021. When master may hypothecate freight money.....	515
	3022. Rate of interest.....	515
	3023. Rights of lender, when no necessity for bottomry existed.....	515
	3024. Stipulation for personal liability void.....	515
	3025. When money loaned is to be repaid.....	515
	3026. When bottomry loan becomes due.....	516
	3027. Bottomry lien, how lost.....	516
	3028. Preference of bottomry lien over other liens.....	516
	3029. Priority of bottomry liens.....	516

CHAPTER V.

RESPONDENTIA.

SECTION	3036. Respondentia, what.....	516
	3037. Respondentia by owner.....	517
	3038. Respondentia by master.....	517
	3039. Rate of interest.....	517
	3040. Obligations of ship owner.....	517

CHAPTER VI.

OTHER LIENS.

SECTION	3046. Lien of seller of real property.....	518
	3047. When transfer of contract waves lien.....	518
	3048. Extent of seller's lien.....	518
	3049. Lien of seller of personal property.....	518
	3050. Purchaser's lien on real property.....	518
	3051. Lien for services.....	519
	3052. Liens on personal property.....	519
	3053. Innkeeper, definition of.....	519
	3054. Innkeeper's lien, what it extends to, generally.....	519
	3055. Not measured by propriety of supplies.....	519
	3056. Goods must be delivered and received in character of guest and innkeeper.....	520
	3057. Extends only to goods which innkeeper is bound to receive.....	520
	3058. Extends to stolen property.....	520
	3059. Extends to horses.....	520
	3060. Boarding-house keeper included as innkeeper.....	520
	3061. Lien of factor.....	520
	3062. Banker's lien.....	521
	3063. Shipmaster's lien.....	521
	3064. Seamen's lien.....	521
	3065. Officer's lien.....	521
	3066. Attorneys' lien.....	521
	3067. Judgment lien.....	521
	3068. Mechanic's lien.....	521
	3069. Lien on ships.....	522
	3070. Enforcement of lien.....	522

CHAPTER VII.

STOPPAGE IN TRANSIT.

SECTION 3076. When consignor may stop goods.....	522
3077. What is insolvency of consignee.....	522
3078. Transit, when ended.....	522
3079. Stoppage, how effected.....	523
3080. Effect of stoppage.....	523

TITLE XV.

NEGOTIABLE INSTRUMENTS.

CHAPTER I. NEGOTIABLE INSTRUMENTS IN GENERAL.

II. BILLS OF EXCHANGE.

III. PROMISSORY NOTES.

IV. CHECKS.

V. BANK NOTES AND CERTIFICATES OF DEPOSIT.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I. GENERAL DEFINITIONS.

II. INTERPRETATION.

III. INDORSEMENT.

IV. PRESENTMENT FOR PAYMENT.

V. DISHONOR.

VI. EXCUSE OF PRESENTMENT AND NOTICE.

VII. EXTINCTION.

ARTICLE I.

GENERAL DEFINITIONS.

SECTION 3086. To what instruments this Title is applicable.....	524
3087. Negotiable instrument, what.	524
3088. Must be for unconditional payment of money.....	524
3089. Payee.....	524
3090. Instrument may be in alternative.....	524
3091. Date, etc.....	524
3092. May contain a pledge, etc.	524
3093. What it must not contain.....	525
3094. Date.....	525
3095. Different classes of negotiable instruments.....	525

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

SECTION 3099. Time and place of payment.....	525
2100. Place of payment not specified.....	525

CONTENTS.

lxxxvii

SECTION	3101. Instruments payable to a person or his order, how construed.....	525
	3102. Undorsed note, when negotiable.....	526
	3103. Fictitious payee.....	526
	3104. Presumption of consideration.....	526

ARTICLE III.

INDORSEMENT.

SECTION	3108. Indorsement, what.....	527
	3109. Agreement to indorse.....	527
	3110. When may be made on separate paper.....	527
	3111. Kinds of indorsement.....	527
	3112. General indorsement, what.....	527
	3113. Special indorsement, what.....	527
	3114. General indorsement, how made special.....	527
	3115. Destruction of negotiability by indorser.....	527
	3116. Implied warranty of indorser.....	527
	3117. Indorser, when liable to payee.....	528
	3118. Indorsement without recourse.....	528
	3119. Same.....	528
	3120. Indorsee privy to contract.....	528
	3121. Indorser has rights of guarantor.....	528
	3122. Rights of accommodation indorser.....	529
	3123. Effect of want of consideration.....	529
	3124. Indorsee in due course, what.....	529
	3125. Rights of indorsee in due course.....	529
	3126. Instrument left blank.....	530

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

SECTION	3130. Effect of want of demand on principal debtor.....	530
	3131. Presentment, how made.....	530
	3132. Apparent maturity, when.....	531
	3133. Presumptive dishonor of bill, payable after sight.....	531
	3134. Apparent maturity of bill, payable at sight.....	531
	3135. Apparent maturity of note.....	531
	3136. Same.....	532
	3137. Surrender of instrument, when a condition of payment.....	532

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

SECTION	3141. Dishonor, what.....	533
	3142. Notice, by whom given.....	533
	3143. Form of notice.....	533
	3144. Notice, how served.....	533
	3145. Notice, how served after indorser's death.....	533
	3146. Notice given in ignorance of death, valid.....	534
	3147. Notice, when to be given.....	534
	3148. Notice of dishonor, when to be mailed.....	534
	3149. Notice, how given by agent.....	534
	3150. Additional time for notice by indorser.....	534
	3151. Effect of notice of dishonor.....	534

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 3155. Notice of dishonor, when excused.....	535
3156. Presentment and notice, when excused.....	535
3157. Same	535
3158. Delay, when excused.....	536
3159. Waiver of presentment and notice.....	536
3160. Waiver of protest.....	536

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

SECTION 3164. Obligation of party, when extinguished	536
3165. Revival of obligation.....	537

CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE I. FORM AND INTERPRETATION.

II. DAYS OF GRACE.

III. PRESENTMENT FOR ACCEPTANCE.

IV. ACCEPTANCE.

V. ACCEPTANCE OR PAYMENT FOR HONOR.

VI. PRESENTMENT FOR PAYMENT.

VII. EXCUSE OF PRESENTMENT AND NOTICE.

VIII. FOREIGN BILLS.

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

SECTION 3171. Bill of exchange, what.....	537
3172. Drawee, in case of need.....	538
3173. Bill in parts of a set.....	538
3174. When must be in a set.....	538
3175. Presentment, etc., of part of set.....	538
3176. Bill, where payable.....	538
3177. Rights and obligations of drawer.....	538

ARTICLE II.

DAYS OF GRACE.

SECTION 3181. Days of grace	539
-----------------------------------	-----

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

SECTION 3185. When a bill may be presented.....	539
3186. Presentment, how made.....	539
3187. Presentment to joint drawees.....	540
3188. When presentment to be made to drawee in case of need.....	540
3189. Presentment, when must be made.....	540

CONTENTS.

lxxxix

ARTICLE IV.

ACCEPTANCE.

SECTION 3193.	Acceptance, how made.....	540
3194.	Holder entitled to acceptance on face of bill.....	541
3195.	What acceptance sufficient with consent of holder.....	541
3196.	Acceptance by separate instrument.....	541
3197.	Promise to accept, when equivalent to acceptance.....	541
3198.	Cancellation of acceptance.....	541
3199.	What is admitted by acceptance.....	542

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

SECTION 3203.	When bill may be accepted or paid for honor.....	542
3204.	Holder of bill of exchange bound to accept payment for honor.....	542
3205.	Acceptance for honor, how made.....	542
3206.	How enforced.....	542
3207.	Notice of dishonor not excused by acceptance for honor.....	543

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

SECTION 3211.	Presentment, when bill not accepted, where made.....	543
3212.	Presentment of bill, payable at particular place.....	543
3213.	Effect of delay in presentment in certain cases.....	543
3214.	Effect in other cases.....	543

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 3218.	Presentment, when excused.....	544
3219.	Delay, when excused.....	544
3220.	Presentment and notice, when excused.....	544

ARTICLE VIII.

FOREIGN BILLS.

SECTION 3224.	Definitions.....	544
3225.	Protest necessary.....	545
3226.	Protest, by whom made.....	545
3227.	Protest, how made.....	545
3228.	Protest, where made.....	545
3229.	Protest, when to be made.....	545
3230.	Protest, when excused.....	545
3231.	Notice of protest, how given.....	545
3232.	Waiver of protest.....	546
3233.	Declaration before payment for honor.....	546
3234.	Damages allowed on dishonor of foreign bill.....	546
3235.	Rate of damages.....	546
3236.	Interest on amount of protested bill.....	546
3237.	Damages, how estimated.....	547
3238.	Same.....	547

l

CONTENTS.

CHAPTER III.

PROMISSORY NOTES.

SECTION 3244. Promissory note, what.....	547
3245. Certain instruments, promissory notes.....	547
3246. Bill of exchange, when converted into a note.....	547
3247. Certain sections applicable to notes.....	547
3248. Effect of delay in presentment.....	548

CHAPTER IV.

CHECKS.

SECTION 3254. Check, what.....	548
3255. Rules applicable to checks.....	548

CHAPTER V.

BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

SECTION 3361. Bank note negotiable after payment.....	548
3362. Title acquired by indorsee.....	549

TITLE XVI.

GENERAL PROVISIONS.

SECTION 3268. Parties may waive provisions of Code.....	549
---	-----

DIVISION FOURTH.

GENERAL PROVISIONS

APPLICABLE TO PERSONS, PROPERTY AND OBLIGATIONS, OR TO TWO OF THOSE SUBJECTS.

PART I. RELIEF.

II. SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

III. NUISANCE.

IV. MAXIMS OF JURISPRUDENCE.

V. DEFINITIONS AND GENERAL PROVISIONS.

PART I.

RELIEF.

- TITLE I. RELIEF IN GENERAL.
- II. COMPENSATORY RELIEF.
- III. SPECIFIC RELIEF.
- IV. PREVENTIVE RELIEF.

TITLE I.

RELIEF IN GENERAL.

SECTION 3274. Species of relief.....	553
3275. Relief in case of forfeiture.....	553

TITLE II.

COMPENSATORY RELIEF.

- CHAPTER I. DAMAGES IN GENERAL.
- II. MEASURE OF DAMAGES.

CHAPTER I.

DAMAGES IN GENERAL.

- ARTICLE I. GENERAL PRINCIPLES.
- II. INTEREST AS DAMAGES.
- III. EXEMPLARY DAMAGES.

ARTICLE I.

GENERAL PRINCIPLES.

SECTION 3231. Person suffering detriment, may recover damages	554
3232. Detriment, what	554
3233. Injuries resulting or probable after suit brought.....	554

ARTICLE II.

INTEREST AS DAMAGES.

SECTION 3237. Person entitled to recover damages, may recover interest thereon.....	555
3238. In actions other than contract.....	555
3239. Limit of rate by contract.....	555
3299. Acceptance of principal waives claim to interest.....	555

ARTICLE III.

EXEMPLARY DAMAGES.

SECTION 3294. Exemplary damages, in what cases allowed.....	556
---	-----

CONTENTS.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

SECTION 3375. Judgment for possession or title.....	570
---	-----

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

SECTION 3379. Judgment for delivery.....	571
3380. When holder may be compelled to deliver.....	571

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

SECTION 3384. In what cases compelled.....	572
3385. Remedy mutual.....	573
3386. No remedy unless mutual.....	574
3387. Distinction between real and personal property.....	574
3388. Contract signed by one party only, may be enforced by other.....	574
3389. Liquidation of damages not a bar to specific performance.....	574
3390. What cannot be specifically enforced.....	575
3391. What parties cannot be compelled to perform.....	575
3392. What parties cannot have specific performance in their favor.....	575
3393. Specific performance not required when oppressive.....	576
3394. Agreement to sell property by one who has no title.....	576
3395. Relief against parties claiming under person bound to perform.....	576

ARTICLE IV.

REVISION OF CONTRACTS.

SECTION 3400. When contract may be revised.....	576
3400. Presumption as to intent of parties.	577
3401. Principles of revision.....	577
3402. Enforcement of revised contract.....	577

ARTICLE V.

RESCISSION OF CONTRACTS.

SECTION 3406. When rescission may be adjudged.....	577
3407. Rescission for mistake.....	578
3408. Court may require party rescinding to do equity.....	578

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

SECTION 3412. When cancellation may be ordered.....	578
3413. Instrument obviously void.....	578
3414. Cancellation in part	578

CONTENTS.

xcv

CHAPTER III.

PREVENTIVE RELIEF.

SECTION 3420. Preventive relief, how granted.....	579
3421. Provisional injunctions.....	579
3422. Injunction, when allowed.....	579
3423. Injunction, when not allowed.....	579

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I. GENERAL PRINCIPLES.

II. FRAUDULENT INSTRUMENTS AND TRANSFERS.

III. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

TITLE I.

GENERAL PRINCIPLES.

SECTION 3429. Who is a debtor.....	581
3430. Who is a creditor.....	581
3431. Contracts of debtor are valid.....	581
3432. Payments in preference.....	581
3433. Relative rights of different creditors.....	582

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

SECTION 3439. Transfers, etc., with intent to defraud creditors.....	582
3440. Certain transfers presumed fraudulent.....	583
3441. Rights of purchasers and mortgagees.....	583
3442. Creditor's right must be judicially ascertained.....	583
3443. Question of fraud, how determined.....	583

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

SECTION 3449. When debtor may execute assignment.....	584
3450. Insolvency, what.....	585
3451. Certain transfers not affected.....	585
3452. What debts may be secured.....	585
3453. What preferences may be given.....	586
3454. Preference must be absolute.....	586
3455. Certain rights not affected by preferences in assignment.....	586

CONTENTS.

SECTION 3456. Joint and separate debts.....	586
3457. Assignment, when void.....	587
3458. The instrument of assignment.....	587
3459. Compliance with provisions of last section necessary to validity of assignment.....	587
3460. Assignee takes, subject to rights of third parties.....	588
3461. Inventory required.....	588
3462. Verification of inventory.....	588
3463. Recording assignment and filing inventory.....	589
3464. Same.....	589
3465. Effect of omitting to record.....	589
3466. Assignment of real property.....	589
3467. Bond of assignees.....	589
3468. Conditions of disposal and conversion.....	590
3469. Accountings.....	590
3470. Property exempt.....	590
3471. Compensation.....	590
3472. Assignees protected for acts done in good faith.....	590
3473. Assent of creditor necessary to modification of assignment.....	590

PART III.

NUISANCE.

- TITLE I. GENERAL PRINCIPLES.
- II. PUBLIC NUISANCES.
- III. PRIVATE NUISANCES.

TITLE I.

GENERAL PRINCIPLES.

SECTION 3479. Nuisance, what.....	591
3480. Public nuisance.....	592
3481. Private nuisance.....	592
3482. What is not deemed a nuisance.....	592
3483. Successive owners.....	592
3484. Abatement does not preclude action.....	592

TITLE II.

PUBLIC NUISANCES.

SECTION 3490. Lapse of time does not legalize.....	592
3491. Abatement.....	592
3492. When notice is required.....	593
3493. Remedies for public nuisance.....	593
3494. Action.....	593
3495. How abated.....	593

TITLE III.

PRIVATE NUISANCES.

SECTION 3501.	Remedies for private nuisance.....	593
3502.	Abatement, when allowed.....	594
3503.	When notice is required.....	594

PART IV.

MAXIMS OF JURISPRUDENCE.

PART V.

DEFINITIONS AND GENERAL PROVISIONS.

SECTION 3549.	Code and Common Law one system.....	602
3550.	Code declaration of one Common Law principle does not change others.....	602
3551.	Expression of one subordinate rule does not abrogate others.....	602
3552.	The rule that statutes in derogation of Common Law, not applicable...	602
3553.	Statutes and Common Law substantially the same—a continuation of.....	602
3554.	How Code is construed.....	602
3555.	Words, how used.....	603
3556.	Sundry words.....	603
3557.	Degrees of care and diligence.....	603
3558.	Care and diligence	603
3559.	Degrees of negligence.....	603
3560.	Negligence.....	604
3561.	Children	604
3562.	Debtor and creditor	604
3563.	Good faith.....	604
3564.	Notice	604
3565.	Actual notice.....	604
3566.	Constructive notice.....	604
3567.	Certain persons deemed to have constructive notice.....	605
3568.	Notice, when impossible.....	605
3569.	Paper.....	605
3570.	Person.....	605
3571.	Several.....	605
3572.	Third persons.....	605
3573.	Holidays	605
3574.	Same.....	605
3575.	Business days.....	605
3576.	Certain acts not to be done on holidays.....	606

CONTENTS.

SECTION 3577. Usage, what.....	606
3578. Same.....	606
3579. Value.....	606
3580. Verdict.....	606
3581. Time.....	607
3582. Genders.....	607
3583. Numbers.....	607
3584. Tense.....	607
3585. "Compound interest," what.....	607
3586. "Signature," what.....	607
3587. "Writing," what.....	607
3588. "Oath," what.....	607
3589. "Seal," what.....	608
3590. "State," what.....	608
3591. Repeal of former statutes	608

ABBREVIATIONS USED IN THIS VOLUME.

C. C., Civil Code. P. C., Penal Code. C. C. P., Code of Civil Procedure. Pol. C., Political Code. Div., Division. Tit., Title. Chap., chapter. Art., article. Sec., section. Subd., subdivision.

CIVIL CODE
OF THE
STATE OF CALIFORNIA.

IN FOUR DIVISIONS.

Condemnation.

the same be a street railroad wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and, in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under Tit. VII, Part III, CODE OF CIVIL PROCEDURE, and the damages assessed and the right of way granted as in other cases.

Stats. 1862, 498, Sec. 2.

Not to use streets, alleys or water, in cities or towns, except by a two-third vote of the city or town authorities.

SEC. 470. No railroad corporation must use any street, alley or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third vote of the town or city authority from which the right must emanate.

NOTE.—This is a limitation upon Sec. 367, general provisions of corporations.

Railroads through cities not to charge fare to and from points therein.

SEC. 471. No railroad corporation, other than street railroads, availing itself of the provisions of the preceding section and acquiring right of way from city authorities, shall ever use their road for street railroad purposes, or for the purpose of carrying passengers for a consideration, from any point to another in the same city.

Stats. 1861, 618, Sec. 21.

When crossing railroads or highways, how other lands are acquired.

SEC. 472. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over or on a level with the track, as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in Tit. VII, Part III, CODE OF CIVIL PROCEDURE, and when compensation is made therefor, the same becomes the property of the corporation.

Stats. 1861, 617, Sec. 19.

Sec. 473. Two or more railroad corporations may consolidate their capital stock, debts, property, assets and franchises, in such manner as may be agreed upon by their respective Boards of Directors. No such amalgamation or consolidation must take place without the written consent of the holders of three-fourths in value of all the stock of each corporation; and no such amalgamation or consolidation must, in any way, relieve such corporation or the stockholders thereof from any and all just liabilities. In case of such amalgamation or consolidation, due notice of the same must be given, by advertisement for one month, in at least one newspaper in each county, if there be one published therein, into or through which such roads run, and also for the same length of time in one paper published in Sacramento, and in two papers published in San Francisco; and when the consolidation and amalgamation is completed, a copy of the new articles of incorporation must be filed in the office of the Secretary of State.

Corporations may consolidate.

Publication of notice.

Copy to be filed.

Stats. 1861, 622, Sec. 40.

CHAPTER III.

BUSINESS, HOW CONDUCTED.

- SECTION 479. Checks to be affixed to all baggage. Damages.
- 480. Annual report to be verified. Form of report.
- 481. Duties of corporation.
- 482. Corporation to pay damages for refusal.
- 483. Furnish room inside passenger cars, and be responsible for damages occurring on freight and other cars.
- 484. Corporations to post printed regulations, and not responsible for damages in violation of rules.
- 485. To pay damages. Not liable in certain cases. Corporation may recover damages, when.
- 486. Regulations of trains. Penalty.
- 487. Conductor may eject passengers, when.
- 488. Officers to wear badge.
- 489. Rates of charges.
- 490. Passenger tickets, how issued and to be good for six months.
- 491. Character of iron to be used.

Sec. 479. A check must be affixed to every package or parcel of baggage, when taken for transportation by any agent or employé of such railroad corporation, and a

Checks to be affixed to all baggage

TITLE VI.

BRIDGE, FERRY, WHARF, CHUTE AND PIER CORPORATIONS.

SECTION 528. Corporation to obtain license from Supervisors.

529. In what contingencies corporate existence ceases.

530. President and Secretary to make annual report, and what to contain. Damages for failing to report.

Corporation to obtain license from Supervisors.

SEC. 528. No corporation must construct or take tolls on a bridge, ferry, wharf, chute or pier, until authority is granted therefor by the Supervisors, pursuant to the provisions of the POLITICAL CODE.

In what contingencies corporate existence ceases.

SEC. 529. Every such corporation ceases to be a body corporate—

1. If, within six months from filing its articles of incorporation, it has not obtained authority from the Board of Supervisors, and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute or pier, and actually expended thereon at least ten per cent. of the capital stock of the corporation.

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute or pier is not completed, as required by the POLITICAL CODE.

3. If, when the bridge, wharf, chute or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter.

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to establish it, or if at any time thereafter it ceases, for a like term consecutively, to perform the duties imposed by law.

Stats. 1850, 347, Sec. 169.

President and Secretary to make annual report, and what to contain.

SEC. 530. The President and Secretary of all bridge, ferry, wharf, chute and pier corporations must annually, under oath, report to the Board of Supervisors of the county in which their articles of incorporation are filed—

1. The cost of constructing and providing all necessary appendages and appurtenances for their bridge, ferry, wharf, chute or pier.

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses.

3. The amount of their capital stock, how much paid in and how much actually expended thereof.

4. The amount received during the year for tolls and from all other sources, stating each separately.

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred.

6. Such other facts and particulars respecting the business of the corporation as the Board of Supervisors may require.

This report the President and Secretary must cause to be published, for four weeks, in a daily newspaper published nearest the bridge, if required by order of the Board of Supervisors. A failure to make such report subjects the corporation to pay to the State two hundred dollars liquidated damages, and for every week permitted to elapse after such failure, fifty dollars damages. All such cases to be reported by the Board of Supervisors to the District Attorney, who must institute suit therefor, and the certificate of the Clerk of the Board of Supervisors of such failure is presumptive proof thereof.

Damages for failing to report.

Stats. 1850, 347, Secs. 170, 173.

TITLE VII.

TELEGRAPH CORPORATIONS.

- SECTION 536. May use right of way along waters, roads and highways.
537. Persons liable for damages for injuring telegraph property.
538. Party guilty of wilful and malicious injury, liable to one hundred times actual damages.
539. Conditions on which damage to sub-aqueous cable may be recovered.
540. Duty to send paid dispatch.
541. May dispose of certain rights.
542. Rates of charges to be fixed, and how published.

SEC. 536. Telegraph corporations may construct lines of telegraph along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers or abutments, for supporting the insulators, wires and other necessary fixtures of their lines, in such manner and at such points as

May use right of way along waters, roads and highways.

not to incommode the public use of the road or highway, or interrupt the navigation of the waters.

Stats. 1857, 171; Sec. 1.

Persons liable for damages for injuring telegraph property.

SEC. 537. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures or destroys the sub-aqueous cable of a telegraph corporation, subjects its owner to the damages hereinbefore specified.

Stats. 1850, 347, Sec. 152; 1857, 171, Sec. 2; 1862, 290, Sec. 8.

Party guilty of wilful and malicious injury, liable to one hundred times actual damages.

SEC. 538. Any person who wilfully and maliciously does any injury to any telegraph property mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any Court of competent jurisdiction.

Stats. 1862, 290, Sec. 8.

Conditions on which damage to sub-aqueous cable may be recovered.

SEC. 539. No telegraph corporation can recover damages for the breaking or injury of any sub-aqueous telegraph cable, unless such corporation has previously erected, on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month, in some newspaper most likely to give notice to navigators, a notice, giving a description and the purpose of the monuments, and the general course, landings and termini of the cable.

Stats. 1857, 171, Sec. 3.

Duty to send paid dispatch.

SEC. 540. Any corporation owning or working any telegraph line in this State, on the payment of the usual charges therefor, as established by its rates, must receive all dispatches from any person, and transmit the same with impartiality and good faith to the person to whom the same is directed; and for any neglect or refusal so to do, such corporation forfeits the sum of five hundred dollars, to be recovered, with costs of suit, by the person desiring to send the same.

Stats. 1850, 347, Sec. 154; 1861, 84, Sec. 5.

Sec. 541. Any telegraph corporation may at any time, with the consent of the persons holding two-thirds of the issued stock of the corporation, sell, lease, assign, transfer or convey any rights, privileges, franchises or property of the corporation, except its corporate franchise.

May dispose of certain rights.

Stats. 1861, 84, Sec. 6.

Sec. 542. Every telegraph corporation must fix uniform rates of charges proportionate to the number of miles, which must be uniform throughout the State, and publish them, by posting such rates at each of their offices in use.

Rates of charges to be fixed, and how published.

[New section.]

TITLE VIII.

WATER AND CANAL CORPORATIONS.

- Section 548. Corporation may obtain contract to supply city or town.
 549. Duties of corporation. Rates fixed by Commissioners.
 550. Right to use streets, ways, alleys and roads.
 551. To build and keep bridges in repair.

Sec. 548. No corporation formed to supply any city or town with water must do so unless previously authorized by an ordinance, or unless it is done in conformity with a contract entered into between the city or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city or town the right to regulate the rates for water, nor must any exclusive right be granted, by contract or otherwise, for a term exceeding fifty years.

Corporation may obtain contract to supply city or town.

Stats. 1852, 171, Sec. 3.

Sec. 549. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water, to the extent of their means, in case of fire or other great necessity, free of charge. The rates to be

Duties of corporation.

How extin-
guished.

SEC. 811. A servitude is extinguished—

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person.
2. By the destruction of the servient tenement.
3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

N. Y. C. C., Sec. 250.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I. RIGHTS OF OWNERS.

II. OBLIGATIONS OF OWNERS.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. INCIDENTS OF OWNERSHIP.

II. BOUNDARIES.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

SECTION 817. Water.

818. Rights of tenant for life.
819. Rights of tenant for years, etc.
820. Same.
821. Rights of grantees of rents and reversion.
822. Rights of lessees and their assignees, etc.
823. Remedy on leases for life.
824. Rent dependent on life.
825. Remedy of reversioners, etc.

Water.

SEC. 817. The owner of land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite

stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same.

N. Y. C. C., Sec. 256.

NOTE.—Probably this section had better be omitted in the Code, and the whole subject of water rights postponed until a system for both *mining* and *irrigating* purposes can be carefully prepared. This would require two or three months of research, thought and careful arrangement.

SEC. 818. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance. Rights of tenant for life.

N. Y. C. C., Sec. 257.

SEC. 819. A tenant for years or at will, unless he is a wrong-doer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and cultivate and harvest the crops growing at the end of his tenancy. Rights of tenant for years, etc.

N. Y. C. C., Sec. 258.

SEC. 820. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section. Same.

N. Y. C. C., Sec. 259.

SEC. 821. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had. Rights of grantees of rents and reversion.

N. Y. C. C., Sec. 260.

SEC. 822. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon Rights of lessees and their assigns, etc.

covenants against encumbrances or relating to the title or possession of the premises.

N. Y. C. C., Sec. 261.

Remedy on
leases for life

SEC. 823. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years

N. Y. C. C., Sec. 263.

Rent de-
pendent on
life.

SEC. 824. Rent dependent on the life of a person may be recovered after as well as before his death.

N. Y. C. C., Sec. 264.

Remedy of
reversioners,
etc.

SEC. 825. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

N. Y. C. C., Sec. 265.

ARTICLE II.

BOUNDARIES.

SECTION 829. Rights of owner.

830. Boundaries by water.

831. Boundaries by ways.

832. Lateral and subjacent support.

833. Trees whose trunks are wholly on land of one.

834. Line trees.

Rights of
owner.

SEC. 829. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

N. Y. C. C., Sec. 266.

Boundaries
by water.

SEC. 830. When land borders upon tide land, or upon water which constitutes an exterior boundary of the State, the owner of the upland takes to high water mark; when it borders upon a navigable lake where there is no tide, the owner takes to the edge of the lake at low water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

N. Y. C. C., Sec. 267.

SEC. 831. An owner of land bounded by a road or street is presumed to own to the centre of the way, but the contrary may be shown.

Boundaries
by ways.

N. Y. C. C., Sec. 268; Kittle vs. Pfeiffer, 29 Cal., 484.

SEC. 832. Each coterminous owner is entitled to the lateral and subjacent support which his land by nature receives from the land of the other.

Lateral and
subjacent
support.

N. Y. C. C., Sec. 269.

SEC. 833. Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

Trees whose
trunks are
wholly on
land of one.

N. Y. C. C., Sec. 270.

SEC. 834. Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

Line trees.

N. Y. C. C., Sec. 271.

CHAPTER II.

OBLIGATIONS OF OWNERS.

SECTION 840. Duties of tenant for life.

841. Monuments and fences.

SEC. 840. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

Duties of
tenant for
life.

N. Y. C. C., Sec. 272.

SEC. 841. Coterminous owners are mutually bound equally to maintain—

Monuments
and fences.

1. The boundaries and monuments between them.

2. The fences between them; unless one of them chooses to let his land lie without fencing; in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

N. Y. C. C., Sec. 273.

title by prescription, mining rules or customs, accession, transfer, will or succession.

N. Y. C. C., Sec. 440.

Note.—“Mining rules or customs” is new.

Prescription

SEC. 1007. Occupancy for the period prescribed by the CODE OF CIVIL PROCEDURE as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

N. Y. C. C., Sec. 441.

TITLE III.

ACCESSION.

CHAPTER I. TO REAL PROPERTY.

II. TO PERSONAL PROPERTY.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

SECTION 1013. Fixtures.

1014. Alluvion.

1015. Sudden removal of bank.

1016. Islands, in navigable streams.

1017. In unnavigable streams.

1018. Islands formed by division of stream.

1019. Abandoned bed of stream.

SEC. 1013. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it.

N. Y. C. C., Sec. 442.

SEC. 1014. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

N. Y. C. C., Sec. 443.

Fixtures.

Alluvion.

SEC. 1015. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

Sudden removal of bank.

N. Y. C. C., Sec. 444.

SEC. 1016. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the State, if there is no title or prescription to the contrary.

Islands, in navigable streams.

N. Y. C. C., Sec. 445.

SEC. 1017. An island or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

In unnavigable streams.

N. Y. C. C., Sec. 446.

SEC. 1018. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

Islands formed by division of stream.

N. Y. C. C., Sec. 447.

SEC. 1019. If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the owners of the land newly occupied take, by way of indemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived.

Abandoned bed of stream.

N. Y. C. C., Sec. 448.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

NOTE.—The provisions of this chapter, except Sec. 1031, are similar to those of the Code Napoleon and the Code of Louisiana.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

THE
CIVIL CODE

OF THE

STATE OF CALIFORNIA.

ANNOTATED BY

CREED HAYMOND AND JOHN C. BURCH,

OF THE

CALIFORNIA CODE COMMISSION.

In Two Volumes.

CALIFORNIA
STATE
LIBRARY
LAW DEPT.

VOL. I.

FIRST EDITION.

SAN FRANCISCO:

A. L. BANCROFT & COMPANY, 721 MARKET STREET.

SUMNER WHITNEY & CO., 613 CLAY STREET.

1874.

Property
escheated
subject to
charges as
other
property.

1407. Real property passing to the State under the last section, whether held by the State or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of Title VIII, Part III, of the CODE OF CIVIL PROCEDURE.

NOTE.—Stats. 1870, p. 72, Sec. 1; 1862, p. 103, Sec. 2, et seq.; 1855, p. 222, Sec. 1, et seq. See, also, note to Sec. 1405, ante.

Successor
liable for
decedent's
obligations.

1408. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the CODE OF CIVIL PROCEDURE.

NOTE.—See Title XI, Part III, Co. Civ. Pro. Cal.

TITLE VIII.

WATER RIGHTS.

SECTION 1410. Rights to water may be acquired by appropriation.

1411. Appropriation must be for a useful purpose.

1412. Point of diversion may be changed.

1413. Water may be turned into natural channels.

1414. First in time, first in right.

1415. Notice of appropriation.

1416. Diligence in appropriating.

1417. Completion defined.

1418. Doctrine of relation applied.

1419. Forfeiture.

1420. Rights of present claimant.

1421. Recorder to keep book in which to record notices.

1422. This Title not to affect rights of riparian proprietors.

Rights to
water may
be acquired
by appro-
priation.

1410. The right to the use of running water flowing in a river or stream or down a cañon or ravine may be acquired by appropriation.

NOTE.—Eddy vs. Simpson, 3 Cal., p. 249; Irwin vs. Phillips, 5 Cal., p. 140; Kidd vs. Laird, 15 Cal., p. 161; Hoffman vs. Stone, 7 Cal., p. 49; McDonald vs. Bear River Co., 13 Cal., p. 220; Ortman vs. Dixon, 13 Cal., p. 34; Rupley vs. Welch, 23 Cal., p. 452; McDonald

vs. Askew, 29 Cal., p. 200; Nevada Water Co. vs. Powell, 34 Cal., p. 109; Davis vs. Gale, 32 Cal., p. 26. Water flowing in a ditch is not the subject of (actual) mechanical partition. A sale and distribution is the only partition which can be made by a Court.—McGillivray vs. Evans, 27 Cal., p. 92.

1411. 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.

Appropriation must be for a useful purpose.

NOTE.—Weaver vs. Eureka Lake Co., 15 Cal., p. 271; McKinney vs. Smith, 21 Cal., p. 374; Hill vs. Smith, 27 Cal., p. 476; American Co. vs. Bradford, 27 Cal., p. 360; Ortman vs. Dixon, 13 Cal., p. 34; McDonald vs. Bear River Co., 13 Cal., p. 220; Davis vs. Gale, 32 Cal., p. 22; Nevada Water Co. vs. Powell, 34 Cal., p. 109.

1412. The person entitled to the use may change the place of diversion, 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.

Point of diversion may be changed.

NOTE.—Kidd vs. Laird, 15 Cal., p. 161; Butte Table Mountain Co. vs. Morgan, 19 Cal., p. 609; Union Water Company vs. Crary, 25 Cal., p. 504.

1413. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

Water may be turned into natural channels.

NOTE.—Richardson vs. Kier, 34 Cal., p. 63; Butte Canal and Ditch Company vs. Vaughan, 11 Cal., p. 143; Hoffman vs. Stone, 7 Cal., p. 46.

1414. As between appropriators, the one first in time is the first in right.

First in time, first in right.

NOTE.—Butte Canal and Ditch Co. vs. Vaughan, 11 Cal., p. 143; Kidd vs. Laird, 15 Cal., p. 161; Weaver vs. Conger, 10 Cal., p. 233; B. R. and A. W. and M. Co. vs. N. Y. Co., 8 Cal., p. 327; Hill vs. King, 8 Cal., p. 336; Davis vs. Yale, 32 Cal., p. 26; Eddy vs. Simp-

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

CALIFORNIA LEGISLATURE
AT SACRAMENTO

FIFTY-FIFTH SESSION
1943

SENATE FINAL HISTORY

SHOWING THE ACTION ON ALL SENATE BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT AND JOINT RESOLUTIONS INTRODUCED

INCLUDING ALSO LISTS OF OFFICERS, MEMBERS, ATTACHES, INTERIM AND STANDING COMMITTEES OF THE SENATE

FIRST HALF—BEGAN JANUARY 4, AND ADJOURNED JANUARY 31, 1943
SECOND HALF—BEGAN MARCH 8, AND ADJOURNED SINE DIE MAY 5, 1943

LEGISLATIVE DAYS - - - - - 71
CALENDAR DAYS - - - - - 122
CONSTITUTIONAL RECESS - - 35

HON. FREDERICK F. HOUSER
PRESIDENT OF THE SENATE

JERROLD L. SEAWELL
PRESIDENT PRO TEMPORE

COMPILED UNDER THE DIRECTION OF
JOSEPH A. BEEK
SECRETARY OF THE SENATE

WITH THE ASSISTANCE OF

HARRY A. HAMMOND
CHIEF ASSISTANT SECRETARY

T. A. RYAN
HISTORY CLERK

944—Slater, Jan. 30. To Com. on Ed.

An act to amend Section 4 of "An act to create a fund to be known as the United States Forest Reserve Fund and to provide for the payment out of such fund to the treasuries of the several counties entitled thereto of certain moneys received from the Government of the United States, and also to regulate the manner of expenditure by the counties of the moneys so paid," approved March 18, 1907, as amended, relating to the apportionment of moneys received by counties from the United States Forest Reserve Fund.

Jan. 30—Read first time. To printer.
 Feb. 3—From printer. To committee.
 Mar. 11—From committee: Do pass.
 Mar. 12—Read second time Referred to Com. on Fin.
 Mar. 16—From committee: Do pass.
 Mar. 17—Read second time.
 Mar. 18—Reported correctly engrossed. Read third time, passed, title approved. To Assembly.
 Mar. 19—In Assembly. Read first time. To Com. on Ed. From committee. Do pass, and re-refer to Com. on W. & M. Re-referred to Com. on W. & M.
 Mar. 20—From committee: Do pass. Read second time. Art. IV, Sec. 15 of Constitution suspended. Read third time, passed, title approved. To Senate.
 Mar. 22—In Senate. To enrollment. Reported correctly enrolled. To Governor.
 April 7—Approved by Governor. Chapter 92.

945—Carter and Collier, Jan. 30. To Com. on Wat. Res.

An act to establish a Water Code, thereby consolidating and revising the law relating to water, including the use of water, the acquisition and regulation of water rights, the control and utilization of water, the distribution of water, the supervision of dams, the use of and rights in streams, wells, pumping plants, and conduits, the establishment and operation of public districts relating to water, and to repeal certain acts and parts of acts specified herein.

Jan. 30—Read first time. To printer.
 Feb. 3—From printer. To committee.
 April 5—From committee: Do pass, and re-refer to Com. on Fin. Re-referred to Com. on Fin.
 April 8—From committee: Do pass.
 April 9—Read second time.
 April 10—Reported correctly engrossed. Read third time, passed, title approved. To Assembly.
 April 10—In Assembly. Read first time. To Com. on C., N. R., & P.
 April 16—From committee: Do pass.
 April 17—Read second time.
 April 30—Read third time, passed, title approved To Senate
 April 30—In Senate. To enrollment.
 May 3—Reported correctly enrolled. To Governor.
 May 13—Approved by Governor. Chapter 368.

946—Carter and Collier, Jan. 30. To Com. on Wat. Res.

An act to add Division 5 and Section 150005 to the Water Code, relating to flood control by cities, counties and the State, including provisions relating to the Reclamation Board, the Sacramento and San Joaquin Drainage District, and to repeal certain acts specified herein.

Jan. 30—Read first time. To printer.
 Feb. 3—From printer. To committee.
 April 5—From committee: Do pass, and re-refer to Com. on Fin. Re-referred to Com. on Fin.
 April 8—From committee: Do pass.
 April 9—Read second time.
 April 10—Reported correctly engrossed. Read third time, passed, title approved. To Assembly.
 April 10—In Assembly. Read first time. To Com. on C., N. R., & P.
 April 16—From committee: Do pass.
 April 17—Read second time.
 April 30—Read third time, passed, title approved. To Senate
 April 30—In Senate. To enrollment.
 May 3—Reported correctly enrolled. To Governor.
 May 13—Approved by Governor. Chapter 369.

CHAPTER 368*

An act to establish a Water Code, thereby consolidating and revising the law relating to water, including the use of water, the acquisition and regulation of water rights, the control and utilization of water, the distribution of water, the supervision of dams, the use of and rights in streams, wells, pumping plants, and conduits, the establishment and operation of public districts relating to water, and to repeal certain acts and parts of acts specified herein.

In effect
August 4,
1943

[Approved by Governor May 13, 1943. Filed with Secretary of State
May 13, 1943.]

NOTE.—The Water Code, as prepared by the California Code Commission, consists of this chapter and Chapters 369 to 372, inclusive, all as originally enacted. As here set forth Chapter 368 contains the provisions of these chapters and also contains all of the amendments to the code made during the Fifty-fifth Session of the Legislature, namely, by chapters 230, 373, 374, 375, 376, 382, 423, 489, 531, 532, 648, 657, 674, 683, 684, 685, 686, 687, 693, 698, 916, 945 and 1054.

The chapters constituting the original code are in effect August 4, 1943. For approval, filing and effective dates of the amendatory chapters, see the respective chapters in their numerical sequence.

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

GENERAL PROVISIONS

- | | |
|------------------------------------|---|
| Title | 1. This act shall be known as the Water Code. |
| Continuation
of existing
law | 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. |
| Tenure | 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. |
| Pending
proceedings | 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. |
| Construction | 5. Unless the provision or the context otherwise requires, these definitions, rules of construction, and general provisions shall govern the construction of this code. |
| Headings | 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. |
| Delegation
of powers | 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 |

* A cross-reference table showing the origin of each section appears in the appendix to this volume.

authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

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. Writings

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. Reference to statutes

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. "Section"
"Subdivision"

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

12. The masculine gender includes the feminine and the neuter. Gender

13. The singular number includes the plural, and the plural, the singular. Number

14. "County" includes city and county. "County"

15. "Shall" is mandatory and "may" is permissive. "Shall" and
"may"

16. "Oath" includes affirmation. "Oath"

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. "Signature"
and "sub-
scription"

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. "State"

19. "Person" means any person, firm, association, organization, partnership, business trust, corporation, or company. "Person"

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. "United
States"

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. Constitutionality

22. "Department," unless otherwise specified, means the Department of Public Works. "Depart-
ment"

23. "State Engineer" means the Chief of the Division of Water Resources in the Department of Public Works. "State
Engineer"

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. Miner's inch
of water

of any dam, who knowingly does work or permits work to be executed on the dam without an approval or in violation of or contrary to any approval as provided for in this part, or any inspector, agent, or employe of the department who has knowledge of such work being done and who fails to immediately notify the department thereof is guilty of a misdemeanor and punishable as provided in this article. Penalties

CHAPTER 9. DAMS UNDER CONSTRUCTION PRIOR TO AUGUST 14, 1929

6450. Any dam which the department finds was not 90 per cent constructed on August 14, 1929 shall be subject to the same provisions as a dam commenced after that date. Provisions applicable

6451. Construction work on such a dam may proceed, if an application for approval thereof is filed, until an order from the department is received approving the dam or specifying how its construction must be made or altered to render it safe. After receipt of an order directing the construction of such a dam, work thereafter must be in accordance with the order. Compliance with order

6452. Dams found to be 90 per cent or more constructed on August 14, 1929 shall be subject to the same supervision as dams which were completed prior to that date. Supervision

PART 2. FISHWAYS OVER DAMS

6500. Whenever an application for approval of plans and specifications for a new dam, or for the enlargement of any dam, in any stream in this State, is filed pursuant to Part 1 of this division, a copy of the application shall be filed with the Fish and Game Commission as required by the Fish and Game Code. Filing of application with Fish and Game Commission

6501. The provisions for the installation of fishways over or around dams and for the protection and preservation of fish in streams obstructed by dams are contained in Article 2, Chapter 1, Part 2, Division 4 of the Fish and Game Code. Provisions governing fishways

DIVISION 4. WELLS, PUMPING PLANTS, CONDUITS AND STREAMS

CHAPTER 1. JOINT USE OF WELLS, PUMPING PLANTS AND CONDUITS

Article 1. Definitions

7000. As used in this chapter "conduit" includes ditch, "Conduit" pipe line, and flume.

Article 2. Contribution of Expenses of Jointly Used Wells, Pumping Plants or Conduits

7001. When two or more persons are associated by agreement in the use of a conduit, well, or pumping plant, for the conveyance or obtaining of water, or are using such conduit, Joint use

well, or pumping plant, or any part thereof, for any lawful purpose, to the construction of which they or their grantors have contributed, each is liable, in the absence of any agreement to the contrary, to the others for the reasonable expenses of maintaining and repairing the same proportionately to the use actually made of the water.

Liability for maintenance
Action for contribution
 7002. If any person neglects, after demand in writing, to pay his proportion of the expenses under the next preceding section, he is liable therefor in an action for contribution, and in any judgment obtained against him interest from the time of demand shall be included.

Plaintiff.
Counsel fees
 7003. The action authorized by this article may be brought by any or all of the parties who have contributed more than his or their just proportion of the expenses, and the plaintiff may recover, as costs, reasonable counsel fees to be fixed by the court.

Article 3. Proceeding for Declaration of Rights in Jointly Used Wells, Pumping Plants or Conduits

Declaratory relief
 7005. When two or more persons are using any conduit, well, or pumping plant for the conveyance of water or any part thereof for the irrigation of land or for any other lawful purpose, to the construction of which they or their grantors have contributed, and which is not under the control or management of any public agency or authority, any one or more of them may bring an action in the superior court of the county in which the conduit, well, or pumping plant, or some part thereof, is situated, for a declaration of the respective rights of the users of water in the conduit, well, or pumping plant, including a determination of the manner in which the conduit, well, or pumping plant shall be administered with respect to repair, upkeep, improvement, and otherwise.

Repair, upkeep, etc
Parties
 7006. The complaint shall contain the names, if known, of all users, and if there are users whose names are unknown, a statement that they are unknown.

Defendants
 7007. The users other than those bringing the action shall be styled defendants.

Summons
 7008. The summons shall contain the names of the parties, and an order to the defendants to appear and show cause why the determination of rights as prayed for in the complaint should not be granted. In all other particulars the summons shall be in the form of, and served in the same manner as, a summons in a civil action.

Determination regarding repair, upkeep, etc
 7009. The court shall determine the manner in which all improvements, repairs, maintenance and other matters relating to the conduit, well, or pumping plant shall be authorized, and thereafter no user of such conduit, well, or pumping plant may make claim for any funds expended for improvements, repairs, maintenance and otherwise except as determined by the court in said action. No authorization for such claim shall be valid except as made under the authority set forth by the decree or judgment of the court.

7010. The decree shall include a determination of the proportionate amount which all users shall contribute to the maintenance, repair, improvement and other expenses relating to the conduit, well, or pumping plant. Contribution for repair, upkeep, etc

CHAPTER 2. PRIVATE WAYS FOR CANALS

7020. As used in this chapter "canal" means an irrigation, drainage, or seepage canal. "Canal"

7021. Private ways for a canal may be opened, laid out, or altered for the convenience of one or more residents or freeholders of any road district in the same manner as public roads are opened, laid out, or altered, except that only one petitioner is necessary. Private ways One petitioner

7022. The petitioner shall be either a resident or freeholder in the road district. Residence requirement

7023. The petitioner shall accompany the petition with a good and sufficient bond, approved by the board of supervisors, in double the amount of the probable cost of viewing, surveying, and laying out the proposed alteration or construction. The bond shall be conditioned that the bondsmen will pay all the costs of viewing and surveying in case the petition is not granted and shall be further conditioned that the bondsmen will pay to the person over whose land the private way is sought to be opened, his necessary costs and disbursements in contesting the opening of the private way, in case the petition is not granted, and the private way finally not opened. Petitioner's bond Conditions

7024. The board of supervisors may order the private way to be viewed, opened, laid out, or altered. Order by board of supervisors

7025. The person for whose benefit the private way is required shall pay the damages awarded to landowners, and shall keep the canal in repair. Damages to Landowners

7026. Any private way for a canal established under this chapter shall follow as nearly as possible the line of natural watercourses, but where this is not practicable, it shall follow as nearly as practicable section or half section lines. Course of private way

CHAPTER 3. CONDUITS ON OR NEAR HIGHWAYS

7030. No canal, flume, or other appliance for conducting water shall be so laid, constructed, or maintained as to obstruct any public highway. Obstruction of public highway

7031. Every person who owns, maintains, operates or uses any canal, flume, or appliance for conducting water, crossing or running along any public highway, shall construct, maintain, and keep in repair such bridges as are necessary to the safe and convenient use of the highway by the public. Bridges

7032. On failure of any person to maintain any bridge required by the next preceding section, the board of supervisors of the county, after seven days' notice in writing to the person, may construct or repair the bridge, and recover from the person the amount of expenditure made in so doing. Construction or repair by board of supervisors

Maintenance
and rep. by
county

7033. Bridges heretofore or hereafter constructed in a permanent manner and approved by the county engineer, or the county board of supervisors, if constructed by irrigation districts, other quasi municipal corporations, public corporations, or private persons over irrigation ditches or drainage ditches, shall, after such construction and acceptance, be maintained and kept in repair by the county in which the bridges are situated and the cost of such maintenance and repair shall be borne by the county.

CHAPTER 4. MAINTENANCE OF FLOW IN STREAMS

Maintenance

7040. The flow of water in any natural stream to the intake of any canal diverting water from the stream for any public use, or the use of any farming neighborhood may be maintained by the person in charge of the use.

Methods of
maintenance

7041. The flow may be maintained by restoring or repairing any break in the bank of the stream, by maintaining the banks of the stream, and by preventing by physical structure and other appropriate means any increased flow of water through any natural by-ways of water which carry or threaten to carry an increased flow of water of the stream away from the canal intake.

Priority
construction
work

7042. No act authorized in this chapter when performed, shall prevent, retard or obstruct the building and maintenance thereafter of any reclamation, protection, or flood control levee.

Other
priorities

7043. No act authorized in this chapter shall prevent the use or enlargement of any natural channel for municipal purposes or for use in connection with any artificial system of drainage, irrigation, or flood control which does not cause the flow of water in the channel at the intake of the canal to be less than the quantity of water the owners and appropriators have the right to divert into the intake.

Same

7044. No act authorized in this chapter shall prevent the use or enlargement of any natural channel to convey water appropriated under the laws of this State, where the channel is designated as the means, or part of the means, of conveying the water so appropriated.

Powers of
Department
of Public
Works

7045. No acts authorized by this chapter shall limit the powers of the Department of Public Works to accomplish in its own way the purposes of this chapter nor interfere with the construction of any flood control works in accordance with any plan of flood control adopted by the Reclamation Board.

CHAPTER 5. CUTS IN BANKS OF STREAMS

Responsi-
bility for
damages

7050. Every person owning or occupying lands upon the bank of any stream where the lands lying back of the stream are lower than the bank, is responsible for all damages sustained by the owners or occupants of lower lands by reason of any cut or embrasure made in the bank of the stream by the owner or occupant of the bank.

7051. If the cuts were made for the purpose of irrigation, and headgates and culverts were installed which competent persons consider sufficient to restrain the water, and if great diligence was used to prevent damage, these facts may be pleaded and proved in mitigation of damages.

Mitigation
of damages

CHAPTER 6. USE OF STREAMS AS CONDUITS

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.

Water may
be turned
into natural
channels

DIVISION 5. FLOOD CONTROL

(Division 5 added by Stats. 1943, Ch. 369, as part of codification.)

PART 1. LOCAL FLOOD CONTROL

CHAPTER 1. FLOOD CONTROL BY CITIES

Article 1. General Provisions

8000. The provisions of this chapter are intended to be paramount and controlling as to all matters provided for in, and as to all questions arising out of procedure under, this chapter.

Provisions
of chapter
control

8001. As used in this chapter, "works" includes canals, ditches, levees, dikes, embankments, dams, machinery, and other appropriate or ancillary means of accomplishing the purposes mentioned in this chapter.

"Works"

8002. As used in this chapter, "city" means any city, town, or municipal corporation incorporated under the laws of this State.

"City"

8003. As used in this chapter, "city council" includes the legislative body of any city by whatever name it may be designated.

"City
council"

8004. Every publication required by this chapter shall be made in some newspaper published in the city.

Publication

8005. Except as otherwise specifically provided, if publication is in a daily paper the publication shall appear in at least 10 issues thereof, and if in a weekly paper in at least two issues thereof.

Period of
publication

8006. No publication shall be deemed to have begun until any required preceding publication has been completed.

Publication
Beginning

Article 2. Preliminary Proceedings

8010. Any city may, pursuant to this chapter, incur indebtedness and liability, although in excess of the income and revenue provided by it for the current fiscal year, but not so that the aggregate funded indebtedness of the city exceeds 6 per cent of the assessed value of all the real and personal property

Incurment
of debt

Payment of
outstanding
indebtedness
by taxation

27754. The appropriate county officers shall proceed to levy and collect as much taxes as may be necessary upon the land formerly embraced within the district, in the same manner and with the same procedure for nonpayment that county taxes are levied and collected, for the purpose of paying any outstanding indebtedness not provided for by previous assessments.

Sale or
distribution
of property

27755. All property of every kind belonging to the district, including land sold to the district for assessments, shall be sold at public sale or shall be distributed to the owners of land within the district upon the terms and for the consideration the court may impose.

Use of
proceeds

27756. The proceeds, if any, from the public sale or the distribution together with all other moneys of the district on hand shall be used to discharge and pay any and all indebtedness of the district.

Disposition
of surplus
funds

27757. All funds remaining after all outstanding indebtedness has been paid shall be apportioned and paid to the assessment payers according to the last equalized assessment of the district.

Dissolution
not barred
by debts

27758. The outstanding indebtedness of any district shall not operate as a bar to dissolution by the superior court when provision is made for the payment of the indebtedness in the manner provided in this article.

PART 12. REPEALS

Repeals

29975. The following acts are hereby repealed:

Yr.	Ch.	Pg.	Yr.	Ch.	Pg.
1854	: 57 :	76	1893	:211 :	295
1860	:220 :	182	1897	:189 :	254
1863-4	: 89 :	87	1903	: 5 :	3
1863-4	:74 :	167	1907	:298 :	569
1865-6	:470 :	609	1915	: 1 :	1
1865-6	:556 :	777	1917	:160 :	243
1867-8	:135 :	112	1917	:591 :	905
1871-2	:634 :	945	1919	:356 :	751
1873-4	:214 :	312	1919	:370 :	778
1875-6	:110 :	79	1921	:600 :	1018
1875-6	:347 :	486	1923	:225 :	449
1875-6	:396 :	547	1927	:748 :	1415
1875-6	:491 :	731	1929	: 64 :	136
1877-8	:300 :	374	1931	: 53 :	46
1877-8	:306 :	387	1933	: 75 :	513
1877-8	:345 :	468	1937	: 24 :	92
1877-8	:526 :	820	1941	:466 :	1765
1887	: 34 :	29			

Repeals

29976. The following acts are hereby repealed:

Yr.	Ch.	Pg.
1917	:606 :	936
1933	:994 :	2557
1935	:833 :	2250

Notwithstanding the repeal of said acts the provisions thereof ^{Exception} as codified in this division shall continue to apply to the Palo Verde Irrigation District.

29978. The repeals effected by this part shall not be construed to deprive any district or any person or other entity of ^{Construction of repeals} any substantial right which would have existed or hereafter exist had such repeals not been effected.

150001. The following sections of the Civil Code are ^{Repeals} repealed:

551	844	1411
842	1410	1412
843	1410b	1413

150002. Sections 2692, 3486 and 3487 of the Political Code ^{Repeals} are repealed.

150003. The following acts are repealed:

Year	Ch.	Pg.	Year	Ch.	Pg.	Repeals
1901	:222	: 660	1921	:411	: 604	
1907	:101	: 122	1921	:854	:1638	
1909	:704	:1079	1921	:889	:1685	
1913	:586	:1012	1925	:477	:1013	
1919	:423	: 826	1929	:766	:1505	
			1935	:692	:1891	

150005. The following acts and sections, together with all ^{Repeals} acts amendatory thereof or supplemental thereto, are hereby repealed:

Political Code 4042.

Secs. 1-5, 5a, 6-12, 12.3, 13-15, 15a, 16, 16½, 17, 18, 18a, 19-33, 33a, 35, 36, 37a and 38 of 1911 (1st Ex. Sess.): 25:117.

Year	Ch.	Pg.	Year	Ch.	Pg.
1895	:106	: 95	1925	:176	: 325
1917	:418	: 536	1925	:303	: 498
1919	:463	: 851	1925	:304	: 499
1919	:519	:1091	1927	:517	: 860
1919	:520	:1092	1927	:568	: 953
1921	:314	: 420	1927	:582	: 971
1921	:419	: 608	1927	:774	:1503
1921	:421	: 610	1927	:809	:1610
1921	:815	:1493	1929	:274	: 579
1921	:816	:1493	1929	:656	:1094
1923	:432	:1005	1931	: 47	: 26
1923	:437	:1013	1935	:365	:1318
1925	:112	: 256	1939	:389	:1721
1925	:129	: 281			

(Added by Stats. 1943, Ch. 369, as part of codification.)

Repeals

150006. The following acts are repealed:

Yr.	Ch.	Pg.	Yr.	Ch.	Pg.
1933	:1042	:2643	1939	: 420	:1753
1935	: 12	: 68	1939	: 670	:2143
1935	: 747	:2101	1941	:1185	:2943
1937	: 838	:2350			

(Added by Stats. 1943, Ch. 370, as part of codification.)

Repeals

150010. The following acts are hereby repealed:

Yr.	Ch.	Pg.
1915	: 627	:1211
1931	:1073	:2263

(Added by Stats. 1943, Ch. 371, as part of codification.)

CHAPTER 369

Stats 1943,
Ch 368,
amended

An act to add Division 5 and Section 150005 to the Water Code, relating to flood control by cities, counties, and the State, including provisions relating to the Reclamation Board, the Sacramento and San Joaquin Drainage District, and to repeal certain acts specified herein.

In effect
August 4,
1943[Approved by Governor May 13, 1943. Filed with Secretary of State
May 13, 1943.]

Note.—See Stats. 1943, Ch. 368.

CHAPTER 370

Stats 1943,
Ch 368,
amended

An act to add Division 6 to the Water Code, relating to the conservation, development and utilization of the water resources of the State, including provisions relating to the State Water Plan, the Central Valley Project, the San Luis Rey Water Authority, the Colorado River Board, and to repeal certain acts specified herein.

In effect
August 4,
1943[Approved by Governor May 13, 1943. Filed with Secretary of State
May 13, 1943.]

Note.—See Stats. 1943, Ch. 368.

LEGISLATIVE DIGEST

AND TABLE OF SECTIONS AFFECTED

JANUARY 4 TO JANUARY 31, 1943

BILLS AND CONSTITUTIONAL
AMENDMENTS INTRODUCED PRIOR
TO THE CONSTITUTIONAL RECESS



CALIFORNIA LEGISLATURE
FIFTY-FIFTH SESSION

Compiled by
FRED B. WOOD
Legislative Counsel

JOSEPH A. BEEK
Secretary of the Senate

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

S.B. 944—SLATER. (Ed.) Amends Act 2685, re apportionment of moneys received by counties from United States Forest Reserve Fund.

Deletes provisions relating to apportionment of funds received from United States Forest Reserve Fund for elementary school purposes. Deleted portions included in Ed. C., S.B. 923.

Prepared under direction of California Code Commission.

S.B. 945-950—CARTER AND COLLIER. (Wat. Res.) Water Code, prepared under direction of California Code Commission.

Assembles and consolidates law relating to water and the use, control, and distribution thereof, without substantive change.

The following bills constitute the code:

S.B. 945, main code bill.

S.B. 946, flood control.

S.B. 947, State Water Plan, authorities, and boards.

S.B. 948, financial supervision of districts.

S.B. 949, irrigation districts.

S.B. 950, repeals obsolete Civil Code provisions re appropriation of water.

S.B. 951—CARTER AND COLLIER. (Wat. Res.) Adds Sec. 1534 and Art. 4, Secs. 1810 to 1814, inc., Ch. 11, Pt. 2, Div. 2, Wat. C., re extension of time to complete projects for appropriation of water initiated prior to December 19, 1914.

Proposes to codify certain provisions deleted in codification of the Water Commission Act, Act 9091, on ground that they were obsolete by passage of time.

Prepared under direction of California Code Commission.

S.B. 952—CARTER AND COLLIER. (Wat. Res.) Adds Secs. 202, 203, 1050.5, and 1050.6, amends Secs. 222 and 275, repeals Art. 5, Ch. 1, Pt. 2, Div. 2, Wat. C., re administration of Divisions 1 and 2 of said code.

Vests powers, duties, and jurisdiction in Department of Public Works, to be administered and exercised by State Engineer, who is to be responsible to Director of Public Works. Repeals provision vesting State Engineer, as Chief of Division of Water Resources, with jurisdiction over appropriations of water.

S.B. 953—CARTER AND COLLIER. (Wat. Res.) Amends Secs. 228 and 275, and repeals Art. 5, Ch. 1, Pt. 2, Div. 2, Wat. C., re administration of Divisions 1 and 2 of said code.

Provides that Department of Public Works, rather than Division of Water Resources and State Engineer shall have jurisdiction as to making of water crop and snow surveys, proceedings to prevent waste of water, and matters relating to appropriation of water.

S.B. 954—CARTER AND COLLIER. (Wat. Res.) Amends Sec. 20700, Wat. C., re formation of irrigation districts.

Specifies that when petition for formation is presented by not less than 500 petitioners, at least 500 shall be residents or landowners in proposed district.

S.B. 955—CARTER AND COLLIER. (Wat. Res.) Amends Sec. 21658, Wat. C., re nomination of officers of irrigation districts.

Provides for filing petition not less than 30, rather than 15, days before election.

S.B. 956—CARTER AND COLLIER. (Wat. Res.) Amends Sec. 1201, Wat. C., re water subject to appropriation.

Deletes restriction to water flowing in natural channel and expands provision to include water in natural lake, pond, or stream as well as that in natural channel.

S.B. 957—CARTER AND COLLIER. (Wat. Res.) Amends Sec. 103, Wat. C., re intent of Legislature in enacting Water Code.

Specifies that provision that there is no intent to change law does not apply to amendments made after original enactment of code.

✓ 9-10-43

STATE OF CALIFORNIA

REPORT OF THE
CALIFORNIA CODE
COMMISSION

TO THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF CALIFORNIA
AT THE LEGISLATIVE SESSION OF 1943



Public Resources Code (all but public lands)
Revenue and Taxation Code (property taxation, effective February 1, 1941)

1941 Legislative Session

Business and Professions Code (in part)
Public Resources Code (in part)
Revenue and Taxation Code (in part)
Streets and Highways Code (in part)

In addition, upon the recommendation of the commission, the Legislature in 1933 enacted a District Organization Act, and an act revising portions of the Code of Civil Procedure, relating to jurisdiction and venue of municipal and justices courts.

2. ORGANIZATION FOR 1941-1943

The commission resumed its work after the 1941 session of the Legislature with the following membership:

B. E. Ahlport, Los Angeles
Dallas L. Barrett, San Francisco
Don G. Bowker, Los Angeles
Gerald H. Hager, Oakland
William G. Hale, Los Angeles
A. M. Kidd, Berkeley
Norris Montgomery, Santa Barbara
William B. Owens, Stanford University
Thomas E. Stanton, San Francisco

During 1941, Messrs. Bowker, Hale, Kidd and Owens were replaced by:

Marion P. Betty, Los Angeles
Edmund Gerald Brown, San Francisco
H. Raymond Hall, Oakland
G. Bentley Ryan, Hollywood

Later, Commissioner Ryan resigned to enter military service. This vacancy has not been filled.

The officers of the commission are as follows:

Gerald H. Hager, Chairman
B. E. Ahlport, Vice Chairman
Dallas L. Barrett, Vice Chairman
Fred B. Wood, Legislative Counsel, Secretary

Members of the commission serve at the pleasure of the Governor, and without compensation.

3. STATEMENT OF WORK DONE

The commission has, since the adjournment of the 1941 legislative session, engaged in the preparation of the Water Code, the Government Code, and the Education Code, and of the remaining portions of those

codes already enacted pursuant to its plan of revision and codification of all the laws of the State. The result of this work are presented as bills upon each of the following codes:

- Business and Professions
- Education
- Government
- Public Resources
- Revenue and Taxation
- Streets and Highways
- Water

Drafts of this material, showing plainly the changes in language and arrangement proposed to be made in codification, were distributed to persons interested in the fields of law covered. Many valuable suggestions were received from these persons. As presented to the Legislature, these bills are believed by the commission to be accurate statements of existing law, arranged for practical use, with obsolete provisions deleted, and wording simplified.

The commission continues to abide by this policy set forth in its 1935 report:

“The commission in its work of revision and codification has adopted a definite policy not to make substantive changes, but to confine its work to a compilation, consolidation, and clarification of the existing law. Such changes in wording as are made, are made to resolve ambiguities or to conform with administrative practice and legislative intent. The revision and codification will present the existing law in such form as to facilitate greatly the making of such substantive changes as are found to be necessary.”

This policy of the commission has found expression in the judicial decisions of this State. In the case of *Sobey v. Molony*, 40 Cal. App. (2d) 381, decided by the district court of appeal on August 13, 1940, the court said:

“It is a demonstrable fact not challenged by respondent, that, by the codification of the law applicable to the practice of medicine in the Business and Professions Code, the Legislature did not intend or attempt to change the substantive provisions of existing statutes, but simply intended to codify and clarify existing provisions. This code does not stand alone. The code commission was created by Statutes of 1929, page 1427, Chapter 750. Since that time it has prepared codifications of many branches of the law. The Business and Professions Code, as adopted in 1937, does not apply only to the practice of medicine but also to 17 other businesses and professions. In codifying the law the Code Commission and the Legislature avoided, wherever possible, any substantive change in existing law.”

The commission has, of course, authority to make “suggestion of such substantive changes in the existing law as may be deemed proper,” which authority it has, on occasion, exercised, notably in the 1933 revision of the Code of Civil Procedure, referred to above. The commission does not consider it feasible, however, to recommend such substantive changes as a part of a code bill.

4. System of Public Instruction
5. Courses of Study
6. Textbooks
7. School Employees
8. Pupils
9. Environment and Equipment
10. Educational Institutions
11. Libraries
12. Miscellaneous Provisions Relating to Education
20. Repeals

(c) Government

The Government Code will be the largest of all California Codes. Only a small part of it, relating to State Government, is proposed for enactment in 1943. In addition, almost 3,000 obsolete statutes relating to that subject are proposed for repeal. The portion of the code now ready is organized by titles and divisions as follows:

Title 1. General

- Division 1. Sovereignty and People of the State
2. State Seal, Flag, and Emblems
 3. Seat of Government, Political Divisions, and Legal Distances
 4. Public Officers and Employees
 5. Public Works and Public Purchases
 6. Public Bonds
 7. Miscellaneous

Title 2. Government of the State of California

- Division 1. General
2. Legislative Department

(d) Public Resources

Division 6, Public Lands, is the only unfinished part of this code. In 1941 the following parts of this division were enacted:

1. Administration and Control of State Lands
2. Leasing of State Lands

At this session there is proposed enactment of the remaining parts, as follows:

3. Sale of Public Lands
4. Federal Lands

(e) Revenue and Taxation

Division 1 of this code, relating to property taxation, was enacted in 1939, to take effect February 1, 1941. Parts of Division 2, relating to State Taxation, were enacted in 1941, to take effect July 1, 1943. Those parts of Division 2 are as follows:

1. Sales and Use Taxes
2. Motor Vehicle Fuel License Tax
3. Use Fuel Tax
4. Motor Vehicle Transportation License Tax

5. Vehicle License Fee
6. Private Car Tax
7. Insurance Taxation

The following parts are proposed to be added in 1943:

8. Inheritance Tax
9. Gift Tax
10. Personal Income Tax

(f) Streets and Highways Code

Three acts are proposed for codification as Division 16, Highway Districts, of this code. They are each a separate part of this division, as follows:

1. Joint Highway Districts
2. Boulevard Districts
3. Bridge and Highway Districts

In addition approximately 400 obsolete acts are proposed for repeal without codification.

(g) Water Code

A portion of this code was presented by the commission for enactment in 1941. Subsequently it developed that interested groups desired a further opportunity for study. During the subsequent interval it has been possible to improve the draft somewhat, and present additional portions for enactment. The material presented in 1943 comprises the following divisions:

1. General State Powers Over Water
2. Water
3. Dams
4. Wells, Pumping Plants, Conduits and Streams
5. Flood Control
6. State Water Plan, Authorities and Boards
10. Financial Supervision of Districts
11. Irrigation Districts

4. ADDITIONAL LEGISLATION PROPOSED

The commission recommends legislation to add to the Probate, Agricultural and Fish and Game Codes a provision substantially as follows:

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

All other codes proposed by the commission contain such a provision, and it seems desirable that all should, inasmuch as those headings are prepared by the commission in drafting a code merely for convenience, and are not based on any preexisting statutory provisions.

In addition the commission recommends legislation to amend Probate Code Section 422, and Streets and Highways Code Section 5362 to resolve certain ambiguities created by codification. These amendments, and the explanation of them, are contained in Appendices D and E.

5. WORK REMAINING TO BE DONE

Four of the codes heretofore enacted or recommended for enactment will at the close of the 1943 legislative session be incomplete. Three of the codes necessary to complete the subject grouping of statutes remain to be drafted and enacted. In addition numerous statutes pertaining to the same subjects now found in the Civil Code, Code of Civil Procedure, and Penal Code, should be incorporated in those codes. Completion of this program, with a small amount of "clean-up" work would find every general and permanent law of the State in one of the 24 codes.

During the ensuing biennium the commission contemplates work upon the four unfinished codes. These are:

Government Code
Revenue and Taxation Code
Streets and Highways Code
Water Code

It is believed that the latter three codes can be finished, and substantial progress made on the Government Code, during that period.

If sufficient time is available, the commission proposes to draft a new code, the Corporation, Partnerships, and Associations Code. It is believed that there is considerable interest in this project. The commission has already received communications from a number of persons interested in the subject.

6. STATEMENT OF RECEIPTS AND EXPENDITURES

A statement of receipts and expenditures of the commission during the current biennium is appended to this report as Appendix A.

7. RECOMMENDATIONS

In accordance with the foregoing, the commission makes the following recommendations:

A. The commission recommends that the Legislature adopt, and that the Governor approve, the

- (1) Proposed Government Code
- (2) Proposed Education Code
- (3) Proposed Water Code
- (4) Additional portions of Business and Professions Code
- (5) Additional portions of Public Resources Code
- (6) Additional portions of Revenue and Taxation Code
- (7) Additional portions of Streets and Highways Code

B. The commission recommends that an adequate sum be made available for carrying on the work of the commission.

GERALD H. HAGAR, Chairman
B. E. AHLPORT, Vice Chairman
DALLAS L. BARRETT, Vice Chairman
MARION P. BETTY
EDMUND GERALD BROWN
H. RAYMOND HALL
NORRIS MONTGOMERY
THOMAS E. STANTON

STATE OF CALIFORNIA

REPORT OF THE
CALIFORNIA CODE
COMMISSION

TO THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF CALIFORNIA
AT THE LEGISLATIVE SESSION OF 1945



TABLE OF CONTENTS

	Page
LETTER OF TRANSMITTAL.....	5
REPORT OF THE CALIFORNIA CODE COMMISSION FOR THE YEARS 1943-1944.....	7
1. Previous Reports	7
2. Organization for 1943-1945.....	8
3. Statement of Work Done, 1943-1945.....	9
4. Work Remaining to Be Done.....	10
5. Statement of Receipts and Expenditures.....	11
6. Recommendations	11
APPENDICES—	
A. Statement of Receipts and Expenditures During Biennium, July 1, 1943, to June 30, 1945.....	12
B. Code Classification	13

REPORT OF THE CALIFORNIA CODE COMMISSION FOR THE YEARS 1943-1944

1. PREVIOUS REPORTS

The California Code Commission, since its appointment in January of 1930, has already submitted seven reports to the Governor and the Legislature. The previous reports were made in December of 1930, and in January of 1933, 1935, 1937, 1939, 1941, and 1943.

The first task of the commission was a page by page examination of each of the 21,000 statutes enacted between 1850 and 1929. From this examination a statutory record was prepared and published, which shows the complete legislative history of every act from the date of its enactment. A description of the mechanics of this work is contained at pages 14 and 15 of the 1930 report.

The unrepealed laws of the State were then allocated to 33 subject headings, which have subsequently been reduced by consolidations to 24. (See Appendix B hereof.) These 24 comprise the names of the three practice codes (Civil, Civil Procedure, and Penal) enacted in 1872, which the commission planned to revise, and the names of 21 other codes which the commission planned to draft. To date 15 of the new codes have been enacted at the commission's recommendation, as follows:

1931 Legislative Session

Probate Code

1933 Legislative Session

Agricultural Code
Fish and Game Code
Military Code

1935 Legislative Session

Insurance Code
Military and Veterans Code
Street and Highways Code (in part)
Vehicle Code

1937 Legislative Session

Business and Professions Code (in part)
Harbors and Navigation Code
Labor Code
Welfare and Institutions Code

1939 Legislative Session

Business and Professions Code (in part)
Elections Code
Health and Safety Code
Public Resources Code (all but public lands)
Revenue and Taxation Code (property taxation,
effective February 1, 1941)

1941 Legislative Session

Business and Professions Code (in part)
 Public Resources Code (in part)
 Revenue and Taxation Code (in part)
 Streets and Highways Code (in part)

1943 Legislative Session

Business and Professions Code (in part)
 Education Code
 Government Code (in part)
 Revenue and Taxation Code (in part)
 Streets and Highways Code (in part)
 Water Code (in part)

In addition, upon the recommendation of the commission, the Legislature in 1933 enacted a District Organization Act, and an act revising portions of the Code of Civil Procedure, relating to jurisdiction and venue of municipal and justices courts.

The commission finally presented no bill to the Legislature in 1943 for the codification of the "Anti-Trading Stamp or Coupon Act" (Statutes of 1905, Chapter 69, page 67), discussed in Appendix C of the commission's 1943 report, as response to the commission's report on that subject indicated that none of the proposed dispositions of that act could be enacted at that time, and the Legislature took no action on that subject.

The amendment to Section 422 of the Probate Code, sponsored by the commission for the reasons set forth in Appendix D of its 1943 report, was enacted (Statutes of 1943, Chapter 522, page 2075), and the amendment to Section 5362 of the Streets and Highways Code, sponsored by the commission for the reasons set forth in Appendix E of its 1943 report, was also enacted by the Legislature (Statutes of 1943, Chapter 975, page 2886).

2. ORGANIZATION FOR 1943-1945

At the time of the last report, January 1, 1943, the following were the members of the commission:

B. E. Ahlport, Los Angeles
 Dallas L. Barrett, San Francisco
 Marion P. Betty, Los Angeles
 Edmund Gerald Brown, San Francisco
 Gerald H. Hagar, Oakland
 H. Raymond Hall, Oakland
 Norris Montgomery, Santa Barbara
 Thomas E. Stanton, San Francisco
 (one vacancy)

In March, 1944, Messrs. Ahlport, Barrett, Betty, Brown, and Hall were replaced and the vacancy was filled by:

William W. Clary, Los Angeles
 Agler B. Ellis, Stockton
 A. M. Kidd, Berkeley
 Sayre Macneil, Los Angeles
 Paul Nourse, Los Angeles
 William B. Owens, Palo Alto

The officers of the commission are:

Gerald H. Hagar, Chairman
 A. M. Kidd, Vice Chairman
 Norris Montgomery, Vice Chairman
 Fred B. Wood, Secretary

Members of the commission serve at the pleasure of the Governor, and without compensation.

3. STATEMENT OF WORK DONE, 1943-1945

At the commencement of this biennium the commission was faced with a problem, arising from the fact that the commission's drafting has heretofore been carried on by the employees of the Legislative Counsel, under contract with him, and that staff was greatly reduced by the direct and indirect effects of the war. The commission had the alternative of continuing on the old basis, with the prospect of a considerable curtailment of its work, or of recruiting and employing a staff of its own. The hazards of obtaining competent personnel at reasonable salaries under present conditions decided the commission in favor of the old basis. As a result, less than \$10,000 out of an appropriation of \$29,450 will have been expended during the biennium.

Only that portion of the Government Code hereinafter described is ready for enactment by the Fifty-sixth Legislature. The staff has, however, done considerable work on codification of the remaining statutes allocated to the Revenue and Taxation Code, and on the codification of those statutes which will comprise the local government part of the Government Code.

The Government Code will be the largest of all California Codes. It has tentatively been organized into six titles, as main divisions.

- I. General
- II. State Government
- III. County Government
- IV. Municipal Corporations
- V. Districts
- VI. Courts

In 1943, Title I and a part of Title II were enacted, as follows:

- Title 1. General
- Division 1. Sovereignty and People of the State
 2. State Seal, Flag, and Emblems
 3. Seat of Government, Political Divisions, and Legal Distances
 4. Public Officers and Employees
 5. Public Works and Public Purchases
 6. Public Bonds
 7. Miscellaneous

Title 2. Government of the State of California

- Division 1. General
2. Legislative Department (in part)

The commission in 1945 proposes the balance of Title II for enactment, as follows:

- Division 2. Legislative Department (in part)
3. Executive Department
4. Fiscal Affairs
5. Personnel

Drafts of this material, comprising more than 600 mimeographed pages with cross reference tables, showing plainly the changes in language and arrangement proposed to be made in codification, were distributed to persons interested in the fields of law covered. Many valuable suggestions were received from these persons. As presented to the Legislature, these bills are believed by the commission to be accurate statements of existing law, arranged for practical use, with obsolete provisions deleted, and wording simplified.

The commission continues to abide by this policy set forth in its 1935 report:

"The commission in its work of revision and codification has adopted a definite policy not to make substantive changes, but to confine its work to a compilation, consolidation, and clarification of the existing law. Such changes in wording as are made, are made to resolve ambiguities or to conform with administrative practice and legislative intent. The revision and codification will present the existing law in such form as to facilitate greatly the making of such substantive changes as are found to be necessary."

The commission has, of course, authority to make "suggestion of such substantive changes in the existing law as may be deemed proper," which authority it has, on occasion, exercised, notably in the 1933 revision of the Code of Civil Procedure, referred to above. The commission does not consider it feasible, however, to recommend such substantive changes as a part of a code bill.

4. WORK REMAINING TO BE DONE

Four of the codes heretofore enacted will at the close of the 1945 legislative session be incomplete. Three of the codes necessary to complete the subject grouping of statutes remain to be drafted and enacted. In addition numerous statutes pertaining to the same subjects now found in the Civil Code, Code of Civil Procedure, and Penal Code, should be incorporated in those codes. Completion of this program, with a small amount of "clean-up" work would find every general and permanent law of the State in one of the 24 codes.

During the ensuing biennium the commission contemplates work upon the four incomplete codes. These are:

- Government Code
- Revenue and Taxation Code
- Streets and Highways Code
- Water Code

Substantial progress can be made on these codes during that period and if the manpower situation becomes better, the latter three may be completed.

There has been considerable demand for a codification of the Unemployment Insurance Act (Statutes of 1935, Chapter 352, page 1226) which is allocated to the Labor Code, and this will probably also be undertaken.

5. STATEMENT OF RECEIPTS AND EXPENDITURES

A statement of receipts and expenditures of the commission during the current biennium is appended to this report as Appendix A.

6. RECOMMENDATIONS

In accordance with the foregoing, the commission makes the following recommendations:

- A. The commission recommends that the Legislature adopt, and that the Governor approve, the proposed additions to the Government Code.
- B. The commission recommends that an amount equal to its 1943 appropriation to be made available for carrying on the work of the commission.

GERALD H. HAGAR, Chairman
 A. M. KIDD, Vice Chairman
 NORRIS MONTGOMERY, Vice Chairman
 WILLIAM W. CLARY
 AGLER B. ELLIS
 SAYRE MACNEIL
 PAUL NOURSE
 WILLIAM B. OWENS
 THOMAS E. STANTON

APPENDIX A

STATEMENT OF RECEIPTS AND EXPENDITURES DURING BIENNIUM
JULY 1, 1943, TO JUNE 30, 1945

RECEIPTS

Appropriation, Chapter 62; 1943-----	\$29,450.00
Salary Emergency Authorization, Chapter 62; 1943-----	750.00
Salary Emergency Authorization, Chapter 62; 1943-----	60.00
Total available for biennium-----	\$30,260.00

EXPENDITURES

Salaries and Wages—	95th F. Y.	96th F. Y.	Total
Salaries (work performed by Legislative Counsel Bureau under contract as staff agency)-----	\$2,834.77	\$4,854.04	\$7,688.81
Materials and Expenses—			
Travel (Com'rs & Adm. Staff)---	207.99	9.80	217.79
Office Expense and Supplies-----	439.99	1,630.94	2,070.93
Total Expenditures-----	\$3,482.75	\$6,494.78	\$9,977.53
Probable Unexpended Balance-----			\$20,282.47
			\$30,260.00

(NOTE.—Expenditures for the balance of the Ninety-sixth Fiscal Year, from April 1, 1945 to June 30, 1945, are estimated.)

APPENDIX B

CODE CLASSIFICATION

(NOTE.—For evolution of this classification see similar lists in Appendix B of earlier reports. There has been no change in this classification since 1943.)

1. Agricultural Code
2. Banking, Building and Loan and Investment Code
3. Business and Professions Code
4. Civil Code
5. Code of Civil Procedure
6. Corporations, Partnerships, and Associations Code
7. Education Code
8. Elections Code
9. Fish and Game Code
10. Government Code
11. Harbors and Navigation Code
12. Health and Safety Code
13. Insurance Code
14. Labor Code
15. Military and Veterans Code
16. Public Resources Code
17. Penal Code
18. Probate Code
19. Public Utilities Code
20. Revenue and Taxation Code
21. Welfare and Institutions Code
22. Streets and Highways Code
23. Vehicle Code
24. Water Code

STATE OF CALIFORNIA

REPORT OF THE
CALIFORNIA CODE
COMMISSION

TO THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF CALIFORNIA
AT THE LEGISLATIVE SESSION OF 1947



TABLE OF CONTENTS

	Page
Letter of Transmittal	5
Report of the California Code Commission for the Years 1945-1946	
1. <i>Status at the Beginning of the Biennium</i>	7
2. <i>Organization for 1945-1946</i>	8
3. <i>Statement of Work Done, 1945-1946</i>	8
4. <i>Work Remaining to Be Done</i>	10
5. <i>Statement of Receipts and Expenditures</i>	11
6. <i>Recommendations</i>	11
Appendices	
A. <i>Statement of Receipts and Expenditures During Biennium July 1, 1945, to June 30, 1947</i>	12
B. <i>Code Classification</i>	13

LETTER OF TRANSMITTAL

To His Excellency EARL WARREN
Governor of California,
and to the Members of the Legislature

The California Code Commission, created in 1929 to undertake the codification, consolidation, compilation and revision of all statutes in force (Government Code, Secs. 10300-10351), herewith submits this report of its transactions during the years 1945 and 1946.

GERALD H. HAGAR, *Chairman*
A. M. KIDD, *Vice Chairman*
NORRIS MONTGOMERY, *Vice Chairman*
WILLIAM W. CLARY
AGLER B. ELLIS
SAYRE MACNEIL
PAUL NOURSE
WILLIAM B. OWENS
THOMAS E. STANTON

January 1, 1947

REPORT OF THE CALIFORNIA CODE COMMISSION FOR THE YEARS 1945-1946

I. STATUS AT THE BEGINNING OF THE BIENNIUM

The activities of the California Code Commission up to the beginning of the current biennium have been covered in eight previous reports submitted to the Governor and the Legislature. The previous reports were made in December of 1930, and in January of 1933, 1935, 1937, 1939, 1941, 1943, and 1945.

The first task of the commission was a page by page examination of each of the 21,000 statutes enacted between 1850 and 1929. From this examination a statutory record was prepared and published, which shows the complete legislative history of every act from the date of its enactment. A description of the mechanics of this work is contained at pages 14 and 15 of the 1930 report.

The unrepealed laws of the State were then allocated to 33 subject headings, which have subsequently been reduced by consolidations to 24. (See Appendix B hereof.) These 24 comprise the names of the three practice codes (Civil, Civil Procedure, and Penal) enacted in 1872, which the commission planned to revise, and the names of 21 other codes which the commission planned to draft. To date 18 of the new codes have been enacted at the commission's recommendation, as follows:

<p><i>1931 Legislative Session</i></p> <p>Probate Code</p>	<p>Public Resources Code (in part)</p> <p>Revenue and Taxation Code (in part)</p>
<p><i>1933 Legislative Session</i></p> <p>Agricultural Code</p> <p>Fish and Game Code</p>	<p><i>1941 Legislative Session</i></p> <p>Business and Professions Code (in part)</p> <p>Public Resources Code (in part)</p> <p>Revenue and Taxation Code (in part)</p> <p>Streets and Highways Code (in part)</p>
<p><i>1935 Legislative Session</i></p> <p>Insurance Code</p> <p>Military and Veterans Code</p> <p>Streets and Highways Code (in part)</p> <p>Vehicle Code</p>	<p><i>1943 Legislative Session</i></p> <p>Business and Professions Code (in part)</p> <p>Education Code</p> <p>Government Code (in part)</p> <p>Public Resources Code (in part)</p> <p>Revenue and Taxation Code (in part)</p> <p>Streets and Highways Code (in part)</p> <p>Water Code (in part)</p>
<p><i>1937 Legislative Session</i></p> <p>Business and Professions Code (in part)</p> <p>Harbors and Navigation Code</p> <p>Labor Code</p> <p>Welfare and Institutions Code</p>	<p><i>1945 Legislative Session</i></p> <p>Government Code (in part)</p>
<p><i>1939 Legislative Session</i></p> <p>Business and Professions Code (in part)</p> <p>Elections Code</p> <p>Health and Safety Code</p>	

In addition, upon the recommendation of the commission, the Legislature in 1933 enacted a District Organization Act, and an act revising portions of the Code of Civil Procedure, relating to jurisdiction and venue of municipal and justices courts.

2. ORGANIZATION FOR 1945-1946

There have been no changes in the membership of the commission, or in its officers, since the last report. The members are:

William W. Clary, Los Angeles
 Agler B. Ellis, Stockton
 Gerald H. Hagar, Oakland
 A. M. Kidd, Berkeley
 Sayre Macneil, Los Angeles
 Norris Montgomery, Santa Barbara
 Paul Nourse, Los Angeles
 William B. Owens, Palo Alto
 Thomas E. Stanton, San Francisco

The officers of the commission are:

Gerald H. Hagar, Chairman
 A. M. Kidd, Vice Chairman
 Norris Montgomery, Vice Chairman
 Fred B. Wood, Secretary

Members of the commission serve at the pleasure of the Governor, and without compensation. The Legislative Counsel is ex officio secretary of the commission.

3. STATEMENT OF WORK DONE, 1945-1946

The commission was able to accomplish more during this biennium than seemed likely at the time of the last report due in large part to the return of some members of the Legislative Counsel's staff from military service. The commission is therefore prepared to recommend to the 1947 Session of the Legislature one new code, the Corporations Code, almost complete, and substantial additions to four other codes. There follows a discussion of the material presented in each case.

(a) Corporations Code

This new code is largely a revision of the Civil Code sections dealing with corporations and partnerships. It will also include the Corporate Securities Act, however, and certain other relatively minor statutes. The organization of the code is as follows:

Title 1. Corporations

- Division 1. General Corporations Law
- Division 2. Nonprofit Corporations
- Division 3. Corporations for Specific Purposes

Title 2. Partnerships

Title 3. Unincorporated Associations

Title 4. Securities

Title 5. Subversive Organization Registration Act

The commission is presenting Titles 1, 2, 3, and 5 as ready for enactment in 1947. Title 4 will not be ready for presentation until 1949.

(b) Government Code

The organization of this code has been tentatively announced as follows:

- Title 1. General
- Title 2. Government of the State of California
- Title 3. Government of Counties
- Title 4. Municipal Corporations
- Title 5. Districts
- Title 6. Courts
- Title 50. Repeals

Titles 1 and 2 were enacted in 1943 and 1945. Title 3 is proposed for enactment in 1947. The divisions of this title are as follows:

- Division 1. Counties Generally
- Division 2. Officers
- Division 3. Financial Provisions
- Division 4. Employees

This new title is largely based on the county government sections of the Political Code, which are proposed for repeal, together with a few sections of the Civil and Penal Codes. In addition approximately 1,500 obsolete statutes pertaining to the subject matter are recommended for repeal.

(c) Health and Safety Code

The additions to this code, first enacted in 1939, would comprise Division 15, "Poisons," and would be based on Deering Act 5994, Chapter 102 of the Statutes of 1907, as amended, which is proposed for repeal.

(d) Labor Code

As anticipated in its 1945 report, the commission has prepared a proposed revision of the Unemployment Insurance Act for enactment as Division 6 of the Labor Code, "Unemployment and Disability Compensation." The present Division 6, "Construction and Repeals," would be changed to be Division 15.

(e) Revenue and Taxation Code

During the biennium the commission prepared and submitted drafts proposing to add Parts 11 and 12 to Division 2 of this code, being the Bank and Corporation Franchise Tax Act and the Corporation Income Tax Act. It developed, however, that sufficient time would not be available for the interested parties to give the attention they desired to the drafts, and the commission determined to postpone further consideration until the next biennium, with the expectation that these parts will be ready for enactment in 1949.

(f) Streets and Highways Code

The Toll Bridge Authority Act forms the bulk of the new Division 17, proposed for enactment in 1949. Also included, however, are various miscellaneous provisions for toll roads and toll ferries.

Drafts of all material referred to, comprising almost 1,800 pages including cross reference tables, showing plainly the changes in language and arrangement proposed to be made in codification, were distributed to persons interested in the fields of law covered. Many valuable suggestions were received from these persons. As presented to the Legislature, the proposed codes and additions to codes are believed by the commission to be accurate statements of existing law, arranged for practical use, with obsolete provisions deleted, and wording simplified.

The commission continues to abide by this policy set forth in its 1935 report:

“The commission in its work of revision and codification has adopted a definite policy not to make substantive changes, but to confine its work to a compilation, consolidation, and clarification of the existing law. Such changes in wording as are made, are made to resolve ambiguities or to conform with administrative practice and legislative intent. The revision and codification will present the existing law in such form as to facilitate greatly the making of such substantive changes as are found to be necessary.”

The commission has, of course, authority to make “suggestion of such substantive changes in the existing law as may be deemed proper,” which authority it has, on occasion, exercised, notably in the 1933 revision of the Code of Civil Procedure, referred to above. The commission does not consider it feasible, however, to recommend such substantive changes as a part of a code bill.

By House Resolution No. 223, adopted by the Assembly of the California Legislature on May 22, 1945, the commission and the Legislative Counsel were requested and directed to study possible revision of the provisions of the statutes governing the publication of legal notices. A mailing list for this study had been developed, and certain alternative plans were under discussion at the date of this report.

4. WORK REMAINING TO BE DONE

Five of the codes prepared by the commission will at the close of the 1947 Legislative Session be incomplete. Two of the codes necessary to complete the subject grouping of statutes remain to be drafted and enacted. In addition numerous statutes pertaining to the same subjects now found in the Civil Code, Code of Civil Procedure, and Penal Code, should be incorporated in those codes. Completion of this program with the necessary amount of “clean-up” work, would find every general and permanent law of the State in one of the 24 codes.

During the ensuing biennium the commission contemplates work upon the five incomplete codes. These are:

- Corporations Code
- Government Code
- Revenue and Taxation Code
- Streets and Highways Code
- Water Code

It is anticipated that during the ensuing biennium the Corporations Code, the Revenue and Taxation Code, and the Streets and Highways Code will be completed, and that substantial progress will be made on the Government Code and the Water Code. It is hoped that some portion of the two remaining codes, the Banking, Building and Loan and Investment Code, and the Public Utilities Code, may be made ready for enactment during that period.

5. STATEMENT OF RECEIPTS AND EXPENDITURES

A statement of receipts and expenditures of the commission during the current biennium is appended to this report as Appendix A.

6. RECOMMENDATIONS

In accordance with the foregoing, the commission makes the following recommendations:

A. That the Legislature adopt, and the Governor approve, the proposed Corporations Code, and the proposed additions to the Government, Health and Safety, Labor, and Streets and Highways Codes.

B. That an adequate sum be made available for carrying on the work of the commission.

GERALD H. HAGAR, Chairman
A. M. KIDD, Vice Chairman
NORRIS MONTGOMERY, Vice Chairman
WILLIAM W. CLARY
AGLER B. ELLIS
SAYRE MACNEIL
PAUL NOURSE
WILLIAM B. OWENS
THOMAS E. STANTON

APPENDIX A

STATEMENT OF RECEIPTS AND EXPENDITURES DURING BIENNIUM
July 1, 1945, to June 30, 1947

RECEIPTS			
Appropriation, Chapter 644:1945	-----		\$29,450 00
EXPENDITURES			
	97th F. Y.	98th F. Y.	Total
Salaries and wages—Salaries (work performed by Legislative Counsel Bureau under contract as staff agency)-----	\$13,653 05	\$11,201 45	\$24,854 50
Materials and expenses—			
Travel (commissioners and administrative staff)-----	111 40	325 00	436 40
Office expense and supplies-----	1,558 09	2,601 01	4,159 10
	\$15,322 54	\$14,127 46*	\$29,450 00

* Note—Expenditures for the balance of the Ninety-eighth Fiscal Year, from January 1, 1947, to June 30, 1947, are estimated.

APPENDIX B

CODE CLASSIFICATION

NOTE—For evolution of this classification see similar lists in Appendix B of earlier reports. The Corporations, Partnerships, and Associations Code is now the Corporations Code.

- | | |
|--|-----------------------------------|
| 1. Agricultural Code | 13. Insurance Code |
| 2. Banking, Building and Loan
and Investment Code | 14. Labor Code |
| 3. Business and Professions Code | 15. Military and Veterans Code |
| 4. Civil Code | 16. Public Resources Code |
| 5. Code of Civil Procedure | 17. Penal Code |
| 6. Corporations Code | 18. Probate Code |
| 7. Education Code | 19. Public Utilities Code |
| 8. Elections Code | 20. Revenue and Taxation Code |
| 9. Fish and Game Code | 21. Welfare and Institutions Code |
| 10. Government Code | 22. Streets and Highways Code |
| 11. Harbors and Navigation Code | 23. Vehicle Code |
| 12. Health and Safety Code | 24. Water Code |

VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1979-80 REGULAR SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 4, 1978

Recessed December 5, 1978	Reconvened January 2, 1979
Recessed April 5, 1979	Reconvened April 16, 1979
Recessed July 20, 1979	Reconvened August 20, 1979
Recessed September 14, 1979	Reconvened January 7, 1980
Recessed March 27, 1980	Reconvened April 7, 1980
Recessed July 16, 1980	Reconvened August 18, 1980

Adjourned August 31, 1980
Adjourned Sine Die November 30, 1980

Legislative Days..... 251

HON. LEO T. McCARTHY
Speaker

HON. JOHN T. KNOX
Speaker pro Tempore

HON. TOM BANE
Assistant Speaker pro Tempore

HON. WILLIE L. BROWN JR.
Majority Floor Leader

HON. CAROL HALLETT
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 1147—Filante.

An act to amend Section 1241 of, to add Sections 100.5, 109, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, to repeal and add Section 71612.5 of, to add Article 1.5 (commencing with Section 1210) to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, the Water Code, relating to water.

1979

- Mar. 22—Read first time.
 Mar. 23—Referred to Com. on W., P., & W. To print.
 Mar. 24—From printer. May be heard in committee April 23.
 May 3—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M. (Ayes 8. Noes 0.) (April 25.)
 May 7—Read second time and amended.
 May 8—Re-referred to Com. on W. & M.
 May 25—From committee chairman, with author's amendments: Amend, and re-refer to Com. on W. & M. Read second time and amended.
 May 29—Re-referred to Com. on W. & M.
 June 18—From committee: Do pass. (Ayes 12. Noes 3.) (June 14.)
 June 19—Read second time. To third reading.
 June 20—Read third time, passed, and to Senate. (Ayes 43. Noes 24. Page 6921.)
 June 20—In Senate. Read first time.
 June 27—Referred to Com. on AGR. & WAT. RES.
 July 18—From committee: chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on AGR. & WAT. RES.

1980

- Feb. 7—From committee: Amend, and do pass as amended, and re-refer to Com. on FIN. (Ayes 8. Noes 0.)
 Feb. 11—Read second time, amended, and re-referred to Com. on FIN.
 June 19—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on FIN.
 June 30—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
 July 1—Read second time. To third reading.
 July 10—Read third time, passed, and to Assembly. (Ayes 22. Noes 1. Page 13395.)
 July 11—In Assembly. Concurrence in Senate amendments pending.
 Aug. 18—Senate amendments concurred in. To enrollment. (Ayes 60. Noes 9. Page 18472.)
 Aug. 20—Enrolled and to the Governor at 11 a.m.
 Sept. 18—Approved by the Governor.
 Sept. 19—Chaptered by Secretary of State—Chapter 933, Statutes of 1980.

A.B. No. 1148—Filante.

An act to add Sections 13938 and 13939 to the Health and Safety Code, relating to fire protection districts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

1979

- Mar. 22—Read first time.
 Mar. 23—Referred to Com. on L.GOV. To print.
 Mar. 24—From printer. May be heard in committee April 23.
 April 25—In committee: Set, first hearing. Held without recommendation.

1980

- Jan. 30—From committee: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV, Sec. 10(a) of the Constitution.

ASSEMBLY BILL

STATE LIBRARY

No. 1147

APR 13 1981

LAW LIBRARY
Introduced by **Assemblyman Filante**

March 22, 1979

REFERRED TO COMMITTEE ON WATER, PARKS, AND WILDLIFE

An act to amend Section 1241 of, to add Sections 100.5, 109, 1011, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, to add Article 1.5 (commencing with Section 1210) and Article 3.5 (commencing with Section 1233) to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, and to repeal Sections 1392 and 1629 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as introduced, Filante (W., P., & W.). Water use.

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

This bill would declare state policy that conformity with local custom should not be determinative of reasonableness, but may 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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits such rights after 3 years of nonuse.

This bill would extend such period to 5 years and would specify that such reversion shall automatically occur upon the

lapse of such period. The bill would also provide that no forfeiture of an appropriative right shall occur where the appropriator fails to use the water because of water conservation efforts, and authorizes the State Water Resources Control Board to require any person claiming the benefit of such provision to file periodic reports, as specified.

(3) Under existing law there are no provisions expressly governing the appropriation of salvage water, that is water that a person has added to the watercourse that would otherwise not have been available for beneficial use.

This bill would specify that the person making salvage water available shall, for 3 years from the date the water becomes available, have the exclusive right to appropriate and use such water. The bill would require a person seeking to appropriate such water to obtain a permit and license from the board and would specify powers and duties of the board in connection with such an appropriation.

(4) Under existing law, the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested.

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition.

(5) Under existing law the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a water user is making an unauthorized diversion of water or is violating a term or condition of a permit or license to appropriate water. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules

governing judicial review of any such order, would authorize the board to seek injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters.

(6) Under existing law there are no provisions expressly governing the ownership of treated wastewater.

This bill would provide that the owner of a wastewater treatment plant shall hold the exclusive right to the treated wastewater as against the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting any permit or license to any person other than the treated wastewater producer for the appropriation of treated wastewater where the producer has introduced such water into the watercourse with the prior intention of maintaining or enhancing instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

(7) Under existing law, the valuation of appropriative rights held under permit or license for purposes of purchase or condemnation by public entities may not be in excess of the actual amount paid to the state for the permit or license.

This bill would repeal such provisions.

(8) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board must find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of one year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds

that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or water rights, in itself, shall not constitute evidence of waste or the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

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

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

1 SECTION 1. Section 100.5 is added to the Water
2 Code, to read:

3 100.5. It is hereby declared to be the established
4 policy of this state that conformity of a use, method of use,
5 or method of diversion of water with local custom should
6 not be determinative of its reasonableness, but may be
7 considered as one factor to be weighed in the
8 determination of the reasonableness of the use, method
9 of use, or method of diversion of water, within the
10 meaning of Section 2 of Article X of the California
11 Constitution.

12 SEC. 2. Section 109 is added to the Water Code, to
13 read:

14 109. The Legislature hereby finds and declares that
15 the growing water needs of the state require the use of
16 water in a more efficient manner and that the efficient
17 use of water requires greater certainty in the definition

1 Article 1.5. Treated Wastewater

2
3 1210. The owner of a wastewater treatment plant
4 shall hold the exclusive right to the treated wastewater as
5 against anyone who has supplied the water discharged
6 into the wastewater collection and treatment system,
7 including a person using water under a water service
8 contract, unless otherwise provided by agreement.

9 Nothing in this article shall affect the treatment plant
10 owner's obligations to any legal user of the discharged
11 treated wastewater.

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

16 1211. The owner of any wastewater treatment plant
17 may, in the name of the record owner of a permit or
18 license, petition the board for a change in the point of
19 diversion or rediversion, place of use, or purpose of use
20 from that specified in such entitlement, or for a change
21 in point of discharge, where and to the extent water
22 under such entitlement contributes to such discharge,
23 but such change may be made only upon the permission
24 of the board. The board shall review such changes
25 pursuant to the provisions of Chapter 10 (commencing
26 with Section 1700) of Part 2 of Division 2.

27 1212. The board shall not grant any permit or license
28 to any person other than the treated wastewater
29 producer for the appropriation of treated wastewater
30 where the producer has introduced such water into the
31 watercourse with the prior intention of maintaining or
32 enhancing fishery, wildlife, recreational, or other
33 instream beneficial uses. Holders of existing water rights
34 may not use or claim such water.

35 SEC. 5. Article 3.5 (commencing with Section 1233)
36 is added to Chapter 1 of Part 2 of Division 2 of the Water
37 Code, to read:

1 recover such sums. In determining the appropriate
2 amount, the court shall take into consideration all
3 relevant circumstances, including but not limited to, the
4 extent of harm caused by the violation, the nature and
5 persistence of the violation, the length of time over which
6 the violation occurs, and the corrective action, if any,
7 taken by the violator.

8 (d) The evidence before the court shall consist of the
9 record before the board and any evidence of a cease and
10 desist order violation. The court may permit the
11 introduction of additional evidence upon a showing of
12 good cause. The court shall determine good cause by
13 considering whether the evidence could have been
14 produced, with reasonable diligence, at the prior
15 administrative hearing or whether the evidence was
16 improperly excluded. In every case, the court shall
17 exercise its independent judgment on the evidence.

18 (e) All funds recovered pursuant to this section shall
19 be transferred to the General Fund of the state.

20

21

Article 5. Private Litigation

22

23 1850. Any factual or legal determinations made
24 pursuant to a valid, final cease and desist order shall be
25 conclusive and shall preclude any party to the order from
26 raising such issues in any subsequent administrative or
27 judicial proceeding.

28 1851. Nothing in this chapter shall be construed to
29 limit or abridge the right of any person to bring an action
30 for equitable or legal relief for harm caused by an
31 unauthorized diversion or a violation of a term or
32 condition of a permit or license. No such person shall be
33 required to exhaust any administrative remedy provided
34 by this chapter before bringing such an action.

O

THE CALIFORNIA LAW OF WATER RIGHTS

By
WELLS A. HUTCHINS



HARVEY O. BANKS
State Engineer of California

In Cooperation With

Production Economics Research Branch
Agricultural Research Service
UNITED STATES DEPARTMENT OF AGRICULTURE
Sacramento, California, 1956

SALVAGED AND DEVELOPED WATERS

COMPARISONS

Physical Distinctions

The essential difference between these two classes of waters is that salvaged waters are parts of a particular stream or other water supply that are saved from loss from the supply by reason of artificial work, and therefore are retained within the supply and so made available for use; whereas developed waters are new waters that are added to a stream or other source or area by means of artificial work. Salvaged waters are already in the area or close to it and are saved and restored to the supply within the area by artificial means; developed waters are not present in the area until brought there by means of artificial devices.

This difference was noted by the California Supreme Court in a case in which a city was asserting that the water it proposed to take for outside use was developed water.⁵¹ The court said that:

It appears that artificial banks have confined the waters to a narrower channel, and it is inferred from the fact that since that time more water has been running in the stream below the city that this developed or made artificial water. But, admitting that such inference can be made, this would be to save water, not to develop it. * * *

It is to be emphasized that although the physical situations and the processes differ, both salvaged and developed waters are made available as the result of artificial work and artificial devices.

Rights of Use

The general rules governing rights to the use of salvaged and developed waters are the same, viz., that the person who by his own efforts makes such waters available is entitled to use them, provided that in doing so he is not infringing the prior rights of others. The reason for the rule is simply that, if one who is entitled to the use of a given quantity of water at a given point gets such use, he may not complain of any prior use which does not impair the quality or diminish the quantity of the water to which he is entitled.⁵² In other words, he is not injured and hence has no logical claim upon the surplus salvaged or developed waters made available by the efforts of others.

⁵¹ *Vernon Irr. Co. v. Los Angeles*, 106 Calif. 237, 253, 39 Pac. 762 (1895). The evidence did not show that there was any developed or artificial water in the stream (106 Calif. at 255).

⁵² *Pomona Land & Water Co. v. San Antonio Water Co.*, 152 Calif. 618, 622-624, 98 Pac. 881 (1908).

Hence, the riparian owner, whose right extends to the natural flow of the stream at his riparian land, has no claim upon waters of either class that are made to flow in the stream by the artificial work of others. If the creator of the flow makes no claim to their use, they are subject to being taken by the first taker.

The question as to whether the person responsible for the existence of salvaged waters must formally appropriate them under the Water Code apparently has not yet been decided by the higher courts.

SALVAGED WATERS

One who, as the result of artificial work, saves water that otherwise would be lost through seepage, percolation, and evaporation is held entitled to the use of such water as against others downstream who theretofore had no access to such water. Thus where it was found that 100 inches of water was lost by absorption and evaporation between the points at which a stream entered the land of defendant and the lower land of plaintiff, both being riparian owners, it was proper for the court in its decree to provide that the defendant company might deliver, by artificial means, at the boundary of plaintiff's land, all waters of the stream flowing at defendant's land in excess of 100 inches, and to appropriate the 100 inches to its own use.⁵³ The court said that:

The plaintiff could under no circumstances be entitled to the use of more water than would reach his land by the natural flow of the stream, and, if he receives this flow upon his land, it is immaterial to him whether it is received by means of the natural course of the stream or by artificial means. On the other hand, if the defendant is enabled by artificial means to give to the plaintiff all of the water he is entitled to receive, no reason can be assigned why it should not be permitted to divert from the stream where it enters its land and preserve and utilize the one hundred inches which would otherwise be lost by absorption and evaporation. * * *

The court believed that this provision in the judgment "accords with the simplest principles of equity in the adjustment of the respective rights to the waters of the stream."

In another case, in which parties had established a pipeline by means of which they prevented a considerable loss of water that had occurred in the stream bed, they were held entitled to the use of such water.⁵⁴ The reason given for the rule by the court was simply that if one who is entitled to the use of a given quantity of water at a given point gets such use, he may not complain of any prior use which does not impair the quality or the quantity of the water. In other words, he is not injured and has no logical claim to the surplus water thus salvaged.

The principle of salvaged water was not applied under the circumstances of one case decided in 1889.⁵⁵ The natural flow of a creek was

⁵³ *Wiggins v. Muscupiabe Land & Water Co.*, 113 Calif. 182, 196, 45 Pac. 160 (1896).

⁵⁴ *Pomona Land & Water Co. v. San Antonio Water Co.*, 152 Calif. 618, 622-624, 93 Pac. 881 (1908).

⁵⁵ *Paige v. Rocky Ford Canal & Irr. Co.*, 83 Calif. 84, 94-96, 21 Pac. 1102 (1889).

obstructed by debris occasioned by an extraordinary freshet, after which water reached plaintiff's riparian land only during periods of extremely high flow. Defendants removed the obstruction for the privilege of conveying water turned by them into the stream, and not for the right to use waters naturally flowing therein. The natural flow increased after the removal of the obstruction. It was held that the defendants were not entitled to take out more water than they turned into the stream. The right of the riparian owner to the natural flow of the water was held to have remained the same as it was before the obstruction was created. The fact that the natural flow was increased by the removal of the obstruction thereby accrued to the benefit of the riparian owner, and not to the defendants, because they had no right to the natural flow under such circumstances.

It is important to note that in the salvaged water cases the right of use of the person who claims to have made the saving has been accorded as against others whose rights in the flow of the stream were not shown to have been infringed by the taking of the salvaged water. Some so-called salvaged water may have been previously lost from the immediate area, yet under natural conditions may reappear in the stream some distance below. Holders of rights in the stream below the point of reappearance who can show that the salvage operations are depriving them of water to which they have prior rights are necessarily in a different position from the upstream claimants who are unable to show injury to their own rights. The essential feature of the right to the use of salvaged waters is that its exercise does not cause injury to any pre-existing right.

DEVELOPED WATERS

Waters Added to a Stream

Where a stream carried its then existing natural flow, and also water added by means of artificial work to the stream after having been taken from the ground by means of wells and tunnels and thence conducted into the stream into which it would not naturally flow at all, "The right to the artificial increment is quite distinct from the title to the natural flow, and the owner thereof may reclaim it from the channel."⁵⁸

⁵⁸ *Moyberry v. Alhambra Addition Water Co.*, 125 Calif. 444, 449, 54 Pac. 530 (1898). The controversy in this case related primarily to the interpretation of a contract. Defendant and plaintiff had entered into a contract allowing defendant to conduct the water flowing in a certain canyon through its pipe across plaintiff's land, plaintiff being allowed to use the water on two days of the week. As the provision in the contract that would control the question as to whether plaintiff was entitled to a share of the developed water as well as the natural flow, was ambiguous, the court held that the parties' own practical construction would control; and since the defendant had been conducting the natural water and the later developed artificial water across plaintiff's land, plaintiff was held entitled to both types of waters on two days of each week.

In another case, "The plaintiffs concede that the defendants were entitled to retake from the channel of the streams any water developed by them and which would not constitute any part of the natural flow of the stream."⁵⁷ The court stated that that concession was consonant with the decisions in *E. Clemens Horst Co. v. New Blue Point Min. Co.*, *Churchill v. Rose*,⁵⁸ and similar cases. The *Horst* case concerned rights to the use of the return flow from foreign waters, and is considered in the discussion of that subject below (see "Waste, seepage, and return waters—Return waters," p. 392). The *Churchill* case is noted immediately below under "Spring waters and ground waters."

Spring Waters and Ground Waters

Where the flow of a spring was increased by improvement by the owner of the land on which it arose, the spring being tributary to a watercourse, the landowner was held entitled to the increased amount of water thus developed from the spring.⁵⁹ The cited decisions to this effect, it is important to note, were rendered a half-century ago.

Under the *extant* principles governing coordination of rights to the use of waters of interconnected supplies, however, if the ground waters thus "developed" were themselves tributary to the stream, the rights of the landowner would be limited to a reasonable share of the common supply. (See "Spring waters—Rights of use—Springs tributary to watercourses," p. 407, and "Interconnected water supplies," p. 517, below.)

Where waters developed by certain tunnels were not shown to be trending towards or supporting any stream or springs on the land of complainant, but would have been lost if not so developed, complainant was not injured either as an adjoining proprietor or as an appropriator and hence could not restrain the taking of the waters away from the lands on which they were found for use elsewhere.⁶⁰

⁵⁷ *L. Mini Estate Co. v. Walsh*, 4 Calif. (2d) 249, 254, 48 Pac. (2d) 666 (1935).

⁵⁸ *E. Clemens Horst Co. v. New Blue Point Min. Co.*, 177 Calif. 631, 634-641, 171 Pac. 417 (1918); *Churchill v. Rose*, 136 Calif. 576, 578-579, 69 Pac. 416 (1902).

⁵⁹ *Churchill v. Rose*, 136 Calif. 576, 578-579, 69 Pac. 416 (1902). See *Gutierrez v. Wege*, 145 Calif. 730, 734, 79 Pac. 449 (1905).

⁶⁰ *Cohen v. La Canada Land & Water Co.*, 151 Calif. 680, 602, 91 Pac. 534 (1907).

Qualifications on Attached Tabular Data

Average annual daily per capita unit use is computed by dividing total annual water production by average annual population served and then dividing the result by the number of days in the year.

This process assigns total water production of a system to the resident population.

Total water production includes conveyance losses within the system and "unaccounted for" losses, and deliveries to industry, commerce, and government.

At this time we are unable to accurately separate residential use because most systems include apartments with commercial use (studies are in progress to make this determination).

Gross per capita use was substituted in this case for delivered residential quantities and computed to monthly household consumption using persons per household, gallons per capita daily and the average number of days in a month. This derived figure was then applied to the rate schedule of the corresponding water agency which results in the average dollar amount paid by a (residential) household for a month of water consumption (average monthly bill).

To determine what the equivalent price paid for an acre-foot of water, multiply the average monthly bill times the number of months it would take a household to use an acre-foot of water.

Price of Water to Residential Consumer
Per Capita Use Both Before, During and After the Drought

	<u>Population</u>	<u>Persons Per Household</u>	<u>Gallons Per Capita Per Day</u>	<u>Months to Use 1 af</u>	<u>Avg. Mo. Bill</u>	<u>Avg. Price (af)</u>
<u>San Diego</u>						
1975	766,900	2.621	181	22.6	\$ 8.80	\$ 199 ¹ / ₂
1976	774,000	2.582	189	22.0	\$ 9.10	\$ 200 ¹ / ₂
1977	791,000	2.573	169	24.6	\$ 8.85	\$ 218 ¹ / ₂
1978	797,400	2.529	173	24.5	\$ 9.35	\$ 229 ¹ / ₂
<u>Los Angeles</u>						
1975	2,725,800	2.545	184	22.9	\$ 7.15	\$ 164
1976	2,744,000	2.537	189	22.4	\$ 8.05	\$ 180 ² / ₂
1977	2,762,500	2.521	158	26.9	\$ 8.60	\$ 231 ² / ₂
1978	2,787,900	2.498	161	26.7	\$ 8.50	\$ 227
<u>San Francisco</u>						
1975	675,200	2.195	154	31.7	\$ 5.40	\$ 171
1976	667,300	2.158	155	32.0	\$ 5.35	\$ 171
1977	676,300	2.160	111	44.7	\$ 5.45	\$ 244
1978	666,500	2.110	118	43.0	\$ 5.00	\$ 215
<u>San Jose</u>						
1975	549,000	3.117	173	19.9	\$ 9.65	\$ 192
1976	560,100	3.061	183	19.1	\$10.35	\$ 198
1977	576,500	3.043	142	24.8	\$ 9.20	\$ 228
1978	587,700	2.979	156	23.0	\$11.45	\$ 264
<u>Chico</u>						
1975	22,600	2.651	327	12.4	\$ 8.10	\$ 100
1976	23,600	2.434	325	13.5	\$ 7.65	\$ 103
1977	24,450	2.404	269	16.6	\$ 6.80	\$ 113
1978	25,250	2.369	286	15.8	\$ 7.00	\$ 111
<u>Red Bluff</u>						
1975	8,275	2.691	354	11.2	\$ 4.60 ³ / ₂	\$ 52
1976	8,400	2.620	399	10.2	\$ 6.00 ³ / ₂	\$ 61
1977	8,475	2.587	335	12.4	\$ 6.00 ³ / ₂	\$ 74
1978	8,925	2.606	304	13.5	\$ 6.00 ³ / ₂	\$ 81
<u>Willows</u>						
1975	4,460	2.728	211	18.6	\$ 9.90	\$ 184
1976	4,520	2.677	230	17.4	\$10.30	\$ 179
1977	4,590	2.658	194	20.8	\$ 9.25	\$ 192
1978	4,710	2.637	204	19.9	\$ 9.50	\$ 189

	<u>Population</u>	<u>Persons Per Household</u>	<u>Gallons Per Capita Per Day</u>	<u>Months to Use 1 af</u>	<u>Avg. Mo. Bill</u>	<u>Avg. Price (af)</u>
<u>Fremont</u>						
1975	116,200	3.215	150	22.2	\$ 7.50	\$ 166
1976	116,300	3.156	163	20.8	\$ 8.70	\$ 181
1977	117,900	3.099	109	31.7	\$ 7.30	\$ 231
1978	120,600	3.049	127	27.7	\$ 8.90	\$ 246
<u>Napa</u>						
1975	46,550	2.708	196	20.2	\$12.45	\$ 251
1976	47,200	2.670	208	19.3	\$12.80	\$ 247
1977	48,050	2.634	153	26.6	\$10.70	\$ 285
1978	48,650	2.613	170	24.1	\$11.30	\$ 272
<u>Modesto</u>						
1975	81,900	2.772	324	11.9	\$ 3.50 ^{3/}	\$ 42
1976	85,200	2.744	358	10.9	\$ 3.50 ^{3/}	\$ 38
1977	89,900	2.716	299	13.2	\$ 3.50 ^{3/}	\$ 46
1978	94,500	2.675	301	13.3	\$ 3.50 ^{3/}	\$ 47
<u>Marin MMWD</u>						
1975	169,332	2.683	167	23.9	\$ 9.85	\$ 235
1976	169,595	2.651	126	32.1	\$13.25	\$ 425
1977	169,809	2.646	61	66.4	\$21.30	\$1414
1978	170,023	2.618	123	33.3	\$13.40	\$ 446
<u>East Bay MUD</u>						
1975	1,052,000	2.672	198	20.3	\$ 7.45	\$ 151
1976	1,050,000	2.637	211	19.3	\$ 7.65	\$ 148
1977	1,050,000	2.606	129	31.9	\$ 7.15	\$ 228
1978	1,041,600	2.581	155	26.8	\$ 8.95	\$ 240

1/ Increase in price not drought caused

2/ Slight increase over 1978 due to drought charge

3/ Flat Rate

NOTE: The method to calculate the average price of water must be based on consumption due to the complexities of the various rate schedules.

PROCEDURE: To find average monthly household bill:

- 1) Multiply persons per household times gallons per capita per day times 30.4 (average days in a month) = number of gallons used in an average month.
- 2) Apply rate schedule to determine amount paid.

To find average price of an acre-foot:

- 1) Divide 325,850 gallons by number of gallons used in an average month = number of months to use an acre-foot (factor).
- 2) Multiply factor times average monthly bill.

ROLL CALL
1979-80

AB 1147

YEA	N-V	NAY	YEA	N-V	NAY	YEA	N-V	NAY	YEA	N-V	NAY
•			•			•			•		
•	Alatorre		•	Felando		•	Kelley		•	Perino	
•	Banc		•	Fenton		•	Knox		•	Priolo	
•	Bannai		•	Filante		•	Lancaster		•	Robinson	
•	Bates		•	Frazer		•	Lehman		•	Rogers	
•	Bergeson		•	Gage		•	Leonard		•	Roos	
•	Berman		•	Goggin		•	Levine		•	Rosenthal	
•	Boatwright		•	Greene		•	Lockyer		•	Ryan	
•	Bosco		•	Hallett		•	Mangers		•	Statham	
•	Brown, Dennis		•	Hannigan		•	McAlister		•	Stirling	
•	Brown, Willie		•	Harris		•	McVittie		•	Tanner	
•	Calvo		•	Hart		•	Mello		•	Thurman	
•	Chacon		•	Hayden		•	Moore		•	Torres	
•	Chappie		•	Hayes		•	Moorhead		•	Tucker	
•	Cline		•	Hughes		•	Mori		•	Vasconcelos	
•	Costa		•	Imbrecht		•	Mountjoy		•	Vicencia	
•	Deddeh		•	Ingalls		•	Naylor		•	Waters, Maxine	
•	Duffy		•	Iwers		•	Nestande		•	Waters, Norman	
•	Egeland		•	Johnson		•	Nolan		•	Wray	
•	Elder		•	Kapiloff		•	Papan		•	Wyman	
•			•			•			•	Young	
•			•			•			•	Mr. Speaker	
•			•			•			•	AB	SB
•			•			•			•	ACA	SCA
•			•			•			•	ACR	SCR
•			•			•			•	AJR	SJR
•			•			•			•	HR	Motion
•			•			•			•	Con. Rpt.	
•			•			•			•	Con.	
•			•			•			•	Rec.	

42/75

DATE: 10-
-JAN 20-
-FEB 30-
-MAR 1-
-APR 2-
-MAY 3-
-JUN 4-
-JUL 5-
-AUG 6-
-SEP 7-
-OCT 8-
-NOV 9-
-DEC 0-

YEA	N-V	NAY	FILE	NOT ON FILE
-0	0-	0-	-1000	-100
-1	1-	1-	-2000	-200
-2	2-	2-	-3000	-300
-3	3-	3-	-4000	-400
-4	4-	4-	-5000	-500
-5	5-	5-	Amend	-600
-6	6-	6-	-2-R	-700
-7	7-	7-	-3-R	-800
-8	8-	8-	-URG	-900
-9	9-	9-	-Suspend	-000

Electrical Roll Call System by International Roll Call Corporation, Richmond, Va. Printed on Thompson-International Overnight Imprinter

ROTH, THORNER & SHORTELL
ATTORNEYS AT LAW

HOLIDAY PLAZA, 1050 NORTHGATE DRIVE

SAN RAFAEL, CALIFORNIA 94903

(415) 479-5023

RUSSELL D. JONES
Counsel

HADDEN W. ROTH
TOM THORNER
BRIAN SHORTELL

June 13, 1973

Mr. William Seeger
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925

Re: "Surplus" water sales

Dear Bill:

I have reviewed the "surplus" water sales and find that they fall into seven categories, as follows:

Category 1 - Horse troughs - There are four of these with total use of about 4 acre feet. All are on surplus contracts with termination clauses requiring from 10 to 90 days notice. Ninety day termination notices have already been given to all four, but one was returned by the post office. Staff has since obtained the consumers new address.

Category 2 - Bootjack Camp - 6 acre feet. This is outside the District, but is served by a spring within the District. I understand from staff that it is not feasible to use the water from this spring to serve any in-District consumers. There is no contract on this one--just a standard service application.

Category 3 - Sausalito-Marín City Sanitary District plant-- 1 acre foot. Standard surplus contract with 90 day termination clause.

Category 4 - Muir Woods (6 acre feet) and Forts Baker, Barry and Cronkhite (184 acre feet) - These are standard government contracts without surplus water clauses, but both contain termination clauses (Muir Woods--July 1, 1974; Forts Baker, Barry and Cronkhite--30 days).

Category 5 - Ranger Station (Mt. Home) - 1/2 acre foot and Dr. Lee Schaller (Cloudview Trail, Sausalito) - 1/3 acre foot. Both of these have standard service applications dating back to 1948 and 1956 respectively and were apparently granted service in the mistaken belief they were within the District (both are just outside District boundaries).

Category 6 - Wolfback Ridge (6 acre feet) - Service was initiated in 1939 on a standard service application. The meter is within the District. Sometime thereafter the consumer began reselling water

Mr. William Seeger
Page Two
June 13, 1973

to other homes in this area (some of which lie outside the District) through private lines, apparently with the acquiescence of the District. In 1961 the Board passed Marin Municipal Water District Code 11.32.090 forbidding resale of water except through pipelines approved by Marin Municipal Water District. In 1965 the Board approved resale through the Wolfback Ridge system.

Category 7 - North Marin County Water District (55 acre feet). Per a 1968 agreement with the North Marin County Water District we supply customers in their District at the Marin Mobilhouse Park and Sundown Shopping Center area near Hamilton Air Force Base. This is not actually a surplus contract since North Marin County Water District is obligated in the event of shortage in the Marin Municipal Water District to supply us with an equal amount of water. A letter was written to the North Marin County Water District on May 4, 1973, requesting that they either take over this service or arrange to supply Marin Municipal Water District with a like amount of water. The contract is terminable on 180 days notice. This contract is among the items to be discussed at the joint North Marin County Water District-Marine Municipal Water District meeting next week.

Generally, a Municipal Water District possesses and can exercise only such powers as are expressly granted to it by statute, are necessarily or fairly implied as an incident to such powers, or are necessary or indispensable (not merely convenient) to the accomplishment of the declared objects and purposes of the District.

A Municipal Water District's powers regarding sale of water are set forth in the Water Code as follows:

Water Code §71610. "Acquisition, distribution, storage, etc., of water. A district may acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses of the district, its inhabitants, or the owners of rights to water in the district."

Water Code §71611. "Sale of water. A district may sell water under its control, without preference, to cities, other public corporations and agencies, and persons, within the district for use within the district."

Water Code §71612. "Sale of surplus water. Whenever the board finds that there is a surplus of water above that which may be required by consumers within the district, the district may sell or otherwise dispose of such surplus water to any persons, public corporations or agencies, or other consumers."

Mr. William Seeger
Page Three
June 13, 1973

Authority (such as found in Water Code §71612) to furnish extraterritorial water service is strictly construed. (See McQuillin, Municipal Corporations, §35.34b and cases cited therein). No California appellate cases exist interpreting the above Water Code sections, but the language seems clear. Water Code §71611 regarding general sale of water limits such sale to "within the district" and also "for use within the district." Under Water Code §71612 water may be sold outside the district or for use outside the district only when the Board finds that there is a surplus over and above the needs of consumers in the district.

Since the Board has declared a water shortage emergency condition caused by threatened water shortage, it would appear that the Board cannot at the same time find there to be a surplus, except in limited situations, such as Category 2. Accordingly, the District is obligated to terminate "surplus" water sales within a reasonable time.

In my opinion Categories 1, 3, 4, and 5, to the extent they have not already been given notice of termination of service, should immediately be given formal written notice of termination specifying a specific reasonable time after which water service will no longer be furnished. Of course, it can be pointed out that the Marin Municipal Water District will consider rescinding such notice and/or reinstating service on a surplus basis if and when our water shortage emergency condition is terminated and a surplus exists.

The reasonable notice should be determined by the Board and should in no event be shorter than any notice provision in any consumer's contract. The cutoff dates should be uniform, although it would be proper to apply an earlier cutoff date to Category 1 (horse troughs) since they are not for human consumption. I would recommend a cutoff date of September 1, 1973, for Category 1 (slightly over 90 days) and at least January 1, 1974, but no later than July 1, 1974, for Categories 3, 4, and 5 (about 6 months to 1 year). The furthest cutoff date in any of the contracts is July 1, 1974 (Muir Woods). Those on standard service applications without specific termination clauses are terminable upon reasonable notice.

Category 2 (Bootjack Camp) should receive the same notice unless the Board finds that the spring water which serves Bootjack Camp is "surplus" since it cannot be used elsewhere in the district. If the Board so finds, this service can be continued indefinitely.

In Category 6 a determination should be made as to which homes in the area are outside the District and the owners and occupants of each such home as well as our customer (Mr. Erway) should be given formal notice of termination, again specifying a reasonable time for

Mr. William Seeger
Page Five
June 13, 1973

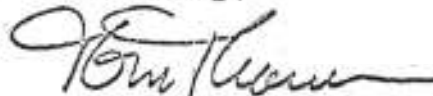
in the matter". The court went on to say that such "rights" were at most "a license which the city may not arbitrarily terminate, but which may be terminated for good cause".

In the Kennilworth case the City of Ithaca refused a new pipeline extension to an apartment developer outside the City's service area on the basis of a threatened water shortage. The court approved the denial stating that "The City must retain power to cut off water service outside its boundaries and cannot give outsiders irrevocable rights to water in disregard of the primary rights of the municipality and its residents". In fact the court noted that granting of such irrevocable rights would be unconstitutional.

Both of these cases indicate that the most consumers outside the district are entitled to expect is (1) a valid reason for termination (such as water shortage); and (2) a reasonable notice to enable them to seek other arrangements for water service.

A possible solution for these surplus consumers may lie in the North Marin County Water District's successful bond issue vote yesterday. If that ends their water shortage emergency condition, it might be possible for North Marin County Water District to sell surplus water to our present surplus consumers. Said water could be delivered by Marin Municipal Water District, and the North Marin County Water District could then replace said water in the same manner as they are obligated to do in Category 7.

Sincerely,



TOM THORNER

TT:am

ROTH & THORNER
ATTORNEYS AT LAW

850 NORTHGATE DRIVE, P. O. BOX 4118
SAN RAFAEL, CALIFORNIA 94903
(415) 479-5023

RUSSELL D. JONES
Counsel

HADDEN W. ROTH
TOM THORNER

July 16, 1973

Mr. William R. Seeger
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925

Re: "Surplus" water sales

Dear Bill:

I have completed some further research on the above question and have found a number of California cases, none of which alter my previous opinion, except that those services in Categories 5 and 6 (Ranger Station, Dr. Lee Schaller, and Wolfback Ridge) may have a slightly stronger case for an estoppel than I previously indicated. However, none of said cases involve a water shortage situation.

There are two lines of California cases allowing cities to serve water users outside their cities where the cities were prohibited by the courts from cutting off the outside users in a non-shortage situation.

First, is the situation where a city purchases an existing water system then serving both said city and persons outside the city. The cases here are South Pasadena v. Pasadena Land and Water Co., 152 C. 579 (1908), Fellows v. City of Los Angeles, 151 C. 62 (1907), City of Coronado v. San Diego, 48 C.A. 2d 160 (1941) and 60 C.A. 2d 395 (1943), Durant v. City of Beverly Hills, 39 C.A. 2d 133 (1940), and San Diego v. La Mesa, Lemon Grove, and Spring Valley Irrigation District, 109 C.A. 280 (1930). They all hold that in accepting the system the City must also accept the burden of continuing to serve the system's consumers even if they are outside the city.

Second, are the cases where the city has agreed to serve consumers outside the city in consideration for certain agreements in return; e.g., the granting of rights of way necessary to the system. See Sawyer v. City of San Diego, 138 C.A. 2d 652 (1956) wherein it was held that the city must continue to serve the outside consumers in this situation.

The overall rule as stated in the South Pasadena case is that a municipal or public corporation may carry on a system and supply water to persons outside its limits, "whenever it becomes necessary or convenient to do so in order to accomplish the main purpose of supplying waters to those within".

Mr. William R. Seeger
Page Two
July 16, 1973

It does not appear that any of the MMWD's outside water consumers' service can be justified under this rule. Fort Baker might have qualified at one time since it was originally served by a private water company purchased by the MMWD, but any such rights appear to have been waived by numerous contracts executed since giving the MMWD a 30 day contract termination right. I have learned since writing my letter of June 13, 1973, that the Army considered annexing to the District some years ago because it realized it could be legally cut off in a shortage situation. Unfortunately the Army did not proceed with the annexation at that time on the theory of "Why bother?"

It should be noted that the Sawyer case mentioned above held in favor of the water users on two bases: (1) There was a valid enforceable contract, and (2) estoppel (despite the usual rule that estoppel will not operate against a governmental entity except in extraordinary circumstances). The facts in the case indicate that the City had served water to the subdivision in question for about 35 years, that the service was to a single purchaser who resold water to others in the subdivision, that the City knew that additional homes were being built from time to time within the subdivision and connected to the system, and that the City increased the size of the connections from time to time to accommodate new development. This case would probably be cited by the Category 5 and 6 users in support of any estoppel claim they might file. However, it should be noted that:

1. Each estoppel case is decided on its own facts;
2. The Sawyer case states, in effect, that the above facts were sufficient to sustain an estoppel finding, not that said facts require an estoppel finding;
3. Regardless of any estoppel, the outside water users in Sawyer had a valid enforceable right to water under the rule of the South Pasadena case;
4. In Sawyer the outside water users conceded in their brief that if the city's water supply "should fail, for any reason beyond the City's control, that technically would excuse performance by the City;" and
5. The court in Sawyer accordingly concluded that:

"The judgment herein should be construed accordingly. There is no showing in the record that there is any water shortage of this nature at the time of trial... We are not holding that the contract involved may be enforced under any and all circumstances which may arise in the future and which might excuse the city from performance in full or in part."

Mr. William R. Seeger
Page Three
July 16, 1973

As indicated above, the Sawyer case, since it does recognize the estoppel theory in an outside water user situation, may give some comfort (but not very much) to Category 5 and 6 users in any estoppel claim.

Sincerely,



TOM THORNER

TT:am

RECEIVED
JUL 17 1973
M. M. W. D.

The intent of this bill is to improve the efficiency of water use through the clarification of water rights and improved means of water transfer.

1. It declares that local custom shall not be used as the sole determinant, but only as one factor in determining the reasonableness of a beneficial use of water.

2. It extends the period of non-use, after which one would lose water rights, from three to five years.

3. Clarifies the ownership of waste-water by conferring ownership rights to the owner of the treatment plant, unless otherwise agreed upon. Additionally, it requires the approval of the State Water Resources Control Board before any changes can be made in the discharge of the treated water, and prevents offstream diversion of treated water which is discharged for beneficial instream purposes.

4. Authorizes the Board to issue cease and desist orders in response to violations of permit, rather than revoking the permit.

5. Requires the Board to conduct a field investigation of all protested permit applications.

6. Facilitates water rights transfers by allowing users to temporarily transfer their rights without forfeiting the rights to the surplus water. It is expected that this provision will result in greater water use efficiency, both in "surplus" water areas and "deficient" water areas.

This bill will have a minor fiscal impact, with first year costs to the State Water Resources Control Board estimated to be \$7,600 and the following yearly costs estimated to be \$15,000 (both estimates are in 1978 dollars and were supplied by the State Water

Resources Control Board). In short, this bill will enact many

DWIGHT K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

KENT L. DECHANBEAU
STANLEY M. LOURIMORE
EDWARD F. NOWAK
EDWARD K. PURCELL

JERRY L. BASSETT
HARVEY J. FOSTER
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKAY
TRACY O. POWELL, II
RUSSELL L. SPARLING
JOHN T. STUDEBAKER
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

9011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
March 19, 1979

Honorable William J. Filante
Assembly Chamber

Water Rights - #4931

Dear Mr. Filante:

Pursuant to your request we have prepared the attached Bill Amendment, relating to the above-named subject. In this connection we call your attention to the possibility that the effect of this enactment might be limited or nullified by reason of:

See attached.

In the interest of time we have not attempted to analyze the question to determine the extent to which this may present a problem; however, we feel obligated to alert you to the existence of any possible problem for such consideration and action as you may desire.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By *Thomas D. Whelan*
Thomas D. Whelan
Deputy Legislative Counsel

TDW:dc

(Form LC 35)

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
CHARLES C. ASBILL
JAMES L. ASHFORD
JANICE R. BROWN
ALICE V. COLLINS
JOHN CORZINE
BEN E. DALE
CLINTON J. DEWITT
C. DAVID DICKERSON
FRANCES S. DORBIN
ROBERT CULLEN DUFFY
LAWRENCE H. FEIN
SHARON R. FISHER
JOHN FOSSETTE
CLAY FULLER
KATHLEEN E. GNEKOW
ALVIN D. GRESS
JAMES W. HEINZER
THOMAS R. HEUER
JACK I. HORTON
EILEEN K. JENKINS
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
RONALD I. LOPEZ
JAMES A. MARSALA
PETER F. MELNICOE
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MARY SHAW
WILLIAM K. STARR
MICHAEL H. UPSON
CHRISTOPHER J. WEI
DANIEL A. WEITZMAN
THOMAS D. WHELAN
JIMMIE WINE
CHRISTOPHER ZIRKLE
DEPUTIES

Pursuant to your request, we have prepared the enclosed bill that would enact certain recommendations for proposed legislation relating to improving efficiency in water use contained in the final report of the Governor's Commission to Review California Water Rights Law. We have prepared the bill in accordance with such recommendations in substantially the wording submitted and have not attempted to consider any legal questions which may be presented by the application of such provisions in any particular situation.

CALIFORNIA FARM BUREAU FEDERATION



PUBLIC AFFAIRS DIVISION
JAMES C. ELLER, Manager
11TH & L BUILDING
SACRAMENTO, CALIF., 95814
TELEPHONE: 916 - 446-4647



April 3, 1979

Honorable William Filante
California State Assembly
State Capitol
Sacramento, California 95814

Dear Mr. Filante:

The purpose of this letter is to inform your office that the California Farm Bureau Federation takes an interest in your AB-1147 and will be seeking some changes prior to the setting for hearing. We are working with Mr. Lee in order to achieve these changes to the extent possible. In any event we will be taking part in hearings on the bill.

You have our support on part of the bill at this time, but we have reservations on other parts.

Sincerely,

A handwritten signature in cursive script that reads "William I. DuBois".

William I. DuBois
Director, Natural Resources

BILL ANALYSIS

ENVIRONMENTAL QUALITY AGENCY

DEPARTMENT STATE WATER RESOURCES CONTROL BOARD	AUTHOR Filante	BILL NUMBER AB 1147
SPONSORED BY	RELATED BILLS	DATE LAST AMEND Original

BILL SUMMARY

7. Put back Comm Rec: to allow local entities to determine which water to sell. not restricted to surplus.

SUMMARY

This bill would enact the legislative recommendations regarding water efficiency, made by the Governor's Commission to Review California Water Rights Law.

ANALYSIS

A. Specific Findings

1. The California Constitution requires that water be reasonably used for beneficial purposes. Under existing law, a court, in determining reasonable beneficial use, may give substantial weight to local custom. This legislation would treat local custom as one factor, but not the exclusive factor, in determining the reasonableness of a beneficial use of water.
2. Under existing law a holder of an appropriative right may forfeit that right where he or she fails to place the claimed water to continuous beneficial use. A pre-1914 appropriator - i.e., one who appropriated water prior to the passage of the Water Commission Act of 1914 - may forfeit the water right after five years of nonuse. A post-1914 appropriator may forfeit the water right after three years of nonuse. This legislation would preclude the application of the forfeiture doctrine where the reduction in the use of water was due to water conservation efforts. In addition the legislation would equalize the pre-1914 and post-1914 appropriative right forfeiture periods at five years and would activate the forfeiture requirement automatically upon the lapse of the five-year period.
3. Under existing law it is unclear who owns wastewater where there exists a dispute between the owner of the treatment plant and the original water supplier. This legislation would confer ownership rights on the owner of the treatment plant. Existing law is also unclear as to rights to change place of use, point of diversion, and purpose of use involving treated wastewater. This legislation would require the discharging party to obtain

from Cliff Lee

VUICH SB 10/12

80-90% of Surface H₂O

(continued on next page)

POSITION SUPPORT	Governor's office use	
	<input type="checkbox"/> Position noted	
	<input type="checkbox"/> Position approved	
	<input type="checkbox"/> Position disapproved	
DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY
<i>W. Alan Maughan</i>	<i>4/15/79</i>	

S.D. R... in N... → create line of...
Is it necessary to stream or
available for down stream appropriation

A. Specific Findings (cont'd)

State Water Resources Control Board approval before such changes could occur in order to protect downstream uses of the return flow. Finally, existing law is unclear as to the status of treated wastewater discharged into a stream for the purpose of enhancing instream beneficial uses. This legislation would ensure that treated wastewater discharged into a stream for instream purposes was protected from offstream diversion or use.

new permit
new rights

Under existing law it is unclear whether a person who salvages water must obtain a permit and license from the State Water Resources Control Board in order to hold a valid right to the salvage water. This legislation would allow a salvager to obtain a permit and license for the salvage water and would grant the salvager, within three years of the salvage effort, an exclusive right to the water.

5. This legislation would declare that a transfer of water or water rights, in itself, would not constitute nonuse or an unreasonable use of water. In addition, the legislation would provide for an expedited procedure for transfer of water or water rights where the duration of the proposed transfer would not exceed one year. The legislation would further authorize trial transfers where the actual impact on downstream beneficial uses would be difficult to determine in advance. long-term transfers requiring a change in place of use, point of diversion, or purpose of use would be allowed unless the transfer would result in substantial injury to any legal user of water. Transfers involving less than substantial injury may be approved and the injured parties remedy would be restricted to action for damages. Water rights quantified pursuant to a statutory adjudication would also be transferrable. "Secret title" means Riparian never leave

SURFACE

NO CE

30d.

??

6. Under existing law the only administrative action available to the State Water Resources Control Board regarding water users who violate the terms or conditions of their permits or licenses is revocation of their entitlements. The Board may also discourage illegal water users by bringing court actions to enjoin the use. Because of the extreme nature of the revocation remedy, it is rarely used. The Board's injunctive authority against illegal users commonly takes too long to provide adequate relief during an

? Transfer Approval
No INJURY
NATL HO COMMISSION
REC. (1973) = PRIVATE
MINEBAT DAMAN

DELETE
#1830

Repeat of 1392
1629 Restrict sale of condemnation
water right to license fee.
unearned minebat daman
investment is kept.

*This imposes civil Penalties
on ① & ② not ③*

ACTIONS NOW

①
A. Specific Findings (cont'd)

*Turnover & Conditions
acts vs. Illegal Diversion
Waste/Unreasonable*

irrigation season. This legislation would provide the Board with the authority to issue cease and desist orders against water users who violate the requirements of their permits or licenses and against illegal users. The Board could enforce violation of such administrative orders by obtaining injunctive relief or through the court imposition of civil penalties of up to \$500 per day.

- 7. Existing law does not require a field investigation and analysis by the State Water Resources Control Board regarding water rights applications or changes in place of use, point of diversion, or purposes of use. Field investigations and analysis by the Board commonly reduce factual disputes among the parties involved in the administrative action. This legislation would require the Board to conduct field investigations and prepare an analysis for all water right applications or changes involving the diversion of three cubic-feet or less per second, or storage of 200 acre-feet or less per year.

*Can save \$0,000/yr
Admin. Costs
Pro trial
Mediation*

B. Fiscal Analysis

First year costs to the State Water Resources Control Board are estimated to be \$7,600 in 1978 dollars. The second and following year costs are estimated to be \$15,200 a year.

LEGISLATIVE HISTORY

1. In 1973, the National Water Commission proposed certain revisions to State water law to encourage water conservation and increased water use efficiency.
2. In 1978, the Governor's Commission to Review California Water Rights Law incorporated a number of the National Water Commission's recommendations into a Final Report.
3. This bill incorporates the recommendations of the Water Rights Commission regarding water use efficiency, with the exception of the Commission's recommendation to delete the provisions in most general and special district acts which restrict delivery of district water outside of district boundaries to "surplus" water. Omission of this recommendation appears to be an oversight; the author will likely amend the bill to reflect this recommendation.

REASONS FOR RECOMMENDED POSITION

1. The state is facing an increasing water supply deficit. Such a deficit will continue even upon completion of the water supply projects proposed by the Department of Water Resources.
2. Given the presence of such a water supply deficit, water rights law should provide for the greatest number of incentives to encourage water conservation and water use efficiency.
3. By removing legal impediments to water conservation and water rights transfers, this legislation will encourage the most efficient use of the resource.

□ SACRAMENTO, CA 95814
TEL.: (916) 445-7827

□ DISTRICT OFFICE ADDRESS
30 NORTH SAN PEDRO ROAD 2125
SAN RAFAEL, CA 94903
TEL.: (415) 479-4920
ATSS 197-1211

California Legislature

REVENUE AND TAXATION
WATER, PARKS AND WILDLIFE



Sacto

WILLIAM J. FILANTE, M.D.
ASSEMBLYMAN, NINTH DISTRICT
(MARIN AND SONOMA COUNTIES)

April 17, 1979

Mr. Larry Lacombe
Title Insurance and Trust Company
P.O. Box 92792
Los Angeles, California 90009

Dear Mr. Lacombe:

Thank you for your inquiry regarding my bill, AB 1147. The purpose of my bill is to draw attention to the need to consider local custom as one factor in determining reasonableness of the use, method of use, or method of diversion of water in our State. Should the 30-year plan now under consideration also include this idea, the bill would, of course, be unnecessary. However, I am not sure at this time that the bill will address this idea, one which I feel is terribly important in the deliberations now under way.

If my bill can help to implement final statewide policy with regard to water use, it will definitely have accomplished its' purpose.

Again, thank you for your inquiry. I will be happy to answer any other questions you have in the future.

Sincerely,

William J. Filante, M.D.
Assembly, Ninth District

WJF:shl



CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

1127 11th STREET, SUITE 336 • SACRAMENTO, CALIFORNIA 95814 • (916) 441-1733

JERRY JORDAN, Executive Director

President

WILLIAM C. WALBRIDGE
Sacramento Municipal Utility District
Sacramento

Vice President

KENNETH D. DUKE
Inglewood

Treasurer

HAROLD GUETERSLOH
San Francisco

Secretary

H. LES BROOKS
Modesto Irrigation District
Modesto

Legal Counsel

ROBERT P. WILL
Metropolitan Water District
Los Angeles

BOARD OF GOVERNORS

MORRIS ALLEN
Santa Cruz

M. N. BENNETT

Modesto Irrigation District

WILLIAM H. FELL

Glendale

EVAN L. GRIFFITH

Metropolitan Water District
Los Angeles

RICHARD W. KING

San Diego

CLYDE N. MOORE

Long Beach

ORAL L. MOORE

Hetch Hetchy Water and Power
San Francisco

JOHN D. NELSON

North Marin County Water District
Nevato

EVERETT C. ROSS

Riverside

E. J. SIMPSON

Redding

DONALD R. VON RAESFELD

Santa Clara

HERBERT E. WESSEL

San Bernardino

LOUIS H. WINNARD

Los Angeles

ADVISORY COUNCIL

IVAN L. BATEMAN

Los Angeles

RALPH FOY

Burbank

T. M. GOODRICH

Pasadena

HAROLD KAINES

Oakland

CARL L. RICHEY

Sacramento

R. A. SKINNER

Los Angeles

JAMES H. TURNER

San Francisco

April 18, 1979

The Honorable William J. Filante
State Capitol, Room 5130
Sacramento, California 95814

Dear Assemblyman Filante:

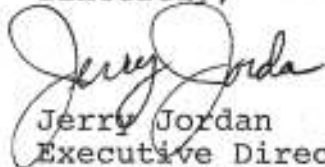
The California Municipal Utilities Association is opposed to your A.B. 1147 relating to water use.

The change in the weight given to local custom in determining reasonableness of water use does not seem to be helpful.

We do believe, however, that some sections of your bill would be useful. The section dealing with providing that the owner of a waste water treatment plant would retain exclusive rights to the treated water is very desirable. Perhaps some of these ideas should be separated into separate legislation.

We would be pleased to discuss our position with you at your convenience.

Sincerely,



Jerry Jordan
Executive Director

JJ:acl

April 23, 1979

The Honorable William J. Filante
California State Assembly
Room 5130 - State Capitol
Sacramento, CA. 95814

APR 24 1979

Re: Assembly Bill 1147

Dear Assemblyman Filante:

This is to express our opposition to your Assembly Bill 1147 in its present form. We have several objections to the bill and would like to take this opportunity to express our concerns to you and to suggest some amendments for your consideration.

Proposed Water Code Section 100.5 specifies that local custom should not be determinative of the reasonableness of water use but may be considered as one factor to be weighed in the determination of reasonableness of use. We suggest that the "may" be changed to "shall" in order to require the consideration of local custom in determining such reasonableness. In our judgment local custom should be a required consideration in determining the reasonableness of use.

We are also concerned with the provision of the bill which would specify that water rights held under Division 2 of the Water Code would automatically be forfeited after a period of five years of nonuse. As a matter of equity it seems appropriate that a holder of a water right permit be notified that his water right is going to be forfeited or reduced and that he be afforded an opportunity for a hearing rather than have the occurrence take place "automatically".

Our next concern relates to the new chapter that is being added to the Water Code relating to salvage water. While we generally support this provision we are very concerned over the definition of the term "salvage water" and believe that definition to be grossly deficient. The present term could be interpreted as meaning imported water which is added to a stream system by the activities of an individual or agency. It is our understanding that this is not the intent of the Water Rights Commission in recommending the legislation on salvage water. We would direct your attention to the comment on salvage water on page 84 of the final report of the Governor's Commission to Review California Water Rights Law.



1127 11th street, #305 • sacramento, ca. 95814 • (916) 441-4545 • john kidd, president
• nat l. eggert, vice president • john p. fraser, executive director and general counsel

Page Two
Filante-AB 1147
April 23, 1979

This language more clearly specifies the intent of the Commission than the language actually proposed in the statute. It would appear to us that the language in this comment would provide a sound basis for developing a better definition of the term salvage water. This definition should specifically provide that salvage water does not include return flow.

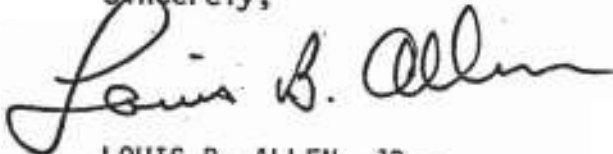
Lastly, our final criticism of the bill is directed to Chapter 12 relating to enforcement of water rights. These provisions would, in effect, make the State Water Resources Control Board the prosecutor, judge, and jury in all water rights matters. It apparently is not limited to the enforcement of terms and conditions in water rights permits issued by the board but extends to all water rights issues.

Once a cease and desist order is issued by the Board, it must be complied with forthwith. Crops can be lost in the meantime. Failure to comply imposes a liability of up to \$500 per day. It is true that an aggrieved person may file a Writ of Mandate but this puts the burden on the user of the water and the evidence he can introduce is limited (Sec. 1840). Needless to say water rights cases take months to prepare and while the Board has all of the time it desires for that purpose, before embarking on a cease and desist proceeding, the defendant has fifteen (15) days within which to ask for a hearing and the Board controls how much time will be allowed to prepare for it.

The present Court procedure for litigating water rights affords the Board, as the plaintiff, and the wateruser, as the defendant, equal opportunity to prepare and and present their cases before a disinterested Judge or jury. Water rights are too important to substitute for the protection afforded by the Courts, an administrative proceeding controlled by a Board subject to the political and social whims of the moment.

We appreciate the opportunity to comment on this legislation and will be happy to work with you and state administrative officials in developing appropriate amendments to resolve our concerns.

Sincerely,



LOUIS B. ALLEN, JR.,
ASSISTANT EXECUTIVE DIRECTOR

LBA:sel

cc: Assembly Committee On Water, Parks and Wildlife
Consultant to same



FRIENDS OF THE RIVER

401 San Miguel Way, Sacramento, CA 95819 • 916/451-9955

April 24, 1979

Assemblyman Lawrence Kapiloff, Chairman
Assembly Water, Parks and Wildlife Committee
State Capitol
Sacramento, CA 95814

Re: AB 1147 (Filante)

Dear Assemblyman Kapiloff,

Friends of the River urges you to support AB 1147. This bill puts into law many of the recommendations of the Governor's Commission to Review Water Rights Law regarding water conservation.

This bill would eliminate the "use it or lose it" doctrine which has been a powerful disincentive to water conservation in the past. The bill would also define the rights of those who reclaim water and strengthen the enforcement mechanisms available to the State Water Resources Control Board to prevent the waste and unreasonable use of water.

The bill provides a mechanism to allow the free market transfer of water provided such transfers do not hurt third parties or unreasonably affect fish and wildlife or other beneficial uses. Economists have long argued that free market transfers will result in more efficient allocation of water. These transfers will benefit both the buyer and the seller and allow water to be put to its highest economic use.

We support free market transfers of water. However, we believe the bill should be strengthened to more fully protect fish, wildlife and other instream uses. Specifically, page 12 lines 17 through 24 (Article 2 section 1739) should be struck from the bill. This prohibits the courts from granting injunctive relief and restricts recourse to action for damages. In the case of damages to fisheries, wildlife or other instream values, this provision would prohibit court injunctions to prevent such damage. Such damage could not be compensated by monetary payments and protestants should have the opportunity to seek injunctive relief to prevent irreparable damage.

This bill provides long needed reforms in water rights law and provides the legal steps necessary to encourage water conservation. We urge you to support this bill.

Sincerely,
Tom Burton
Tom Burton

cc: Assemblyman William Filante
Members of the Committee
Friends of the Earth
Planning and Conservation League



1979-80 Bill file
A

THE PLANNING AND CONSERVATION LEAGUE • 717 K STREET, SUITE 209 • SACRAMENTO, CA 95814 • (916) 444-8726

OFFICERS
resident
THOMAS E. ROSS
ice Presidents
y Area
BARBARA EASTMAN
entral Valley
ANDY MOTLEY
s Angeles
ARLENE MITCHELTHREE
n Diego
JOHN HOBBS

April 24, 1979
Re: AB 1147 (Filante)
PCL position: Support

Assemblyman Lawrence Kapiloff, Chairman
Assembly Water, Parks and Wildlife Committee
State Capitol
Sacramento, CA 95814

BOARD OF DIRECTORS
inet Adams
ark Brady
elson E. Bristoff
leanor Boushey
elen Burke
izabeth Crowder
ard Elliott
rald Fox
inet Frost
m Graff
ug Graham
ne Hagedorn
vid Hirsch
ge Howe
ane Hunter
ichael Jacobs
bert Kirkwood
il Korlum
ed Lang
le Larsen
rolyn Martin
le Mason
right May
dys Meade
win R. Mosine
gh Perry
m Phillips
bert Rabb
n Reiss
il Sedway
eneith Smith
ght Steele
hard Warden
harine Weber
Ham Wilcoxon
m Zafman

Dear Chairman Kapiloff,

The Planning and Conservation League (PCL) urges you to support AB 1147 (Filante), which contains many recommendations of the Governor's Water Rights Commission, concerning legal reforms necessary to ensure the water is not wasted, but rather is conserved and used efficiently.

Specifically, AB 1147 would change existing law so that appropriators who conserve water do not lose their rights to that water. This has been a serious impediment to conservation in the past.

The bill also provides that past local custom is not determinative of the "reasonable" use of water. Clearly, what was reasonable in the 1920s may not be reasonable in the 1980s.

The bill provides for free market transfers of water, first on a one year trial basis, and then on a long term basis, if the State Water Resources Control Board determines that such transfers will not unreasonably impair the rights of water users or the beneficial needs of fish and wildlife. Such a transfer mechanism is essential to ensure that water is used efficiently in this state. Research by resource economists at the University of California, and others, clearly has shown that such transfers will be cost-effective, both to the seller and to the buyer. This mechanism will guarantee that our existing supply of water is distributed in an economically efficient manner, thus reducing the need for costly new supplies. It will also ensure that those areas which need additional supplies can obtain them at fair market value, which will probably be less than the cost of new supplies.

AB 1147 will create water rights for persons who reclaim waste water, thus encouraging reclamation.

Finally, AB 1147 will strengthen enforcement mechanisms for the State Water Resources Control Board to use in controlling waste and unreasonable use of water.

PCL believes that water conservation is the best solution to California's future water needs. AB 1147 will encourage conservation and efficiency and

ERITUS
is Butler
Evers
ed Heller
eph Houghteling
Lane
aniel Owings
en Reynolds
ard Wilson
IFORNIA
OSIDE COUNCIL
urton
n Harvey Carter
Mason

we urge your "Aye" vote when this bill is heard in the Assembly Water,
Parks and Wildlife Committee on Wednesday, April 25, 1979.

Sincerely,



DAVID F. ABELSON
EXECUTIVE DIRECTOR

cc: Assemblyman William Filante
Members of the Committee
Don Maughn, Chairman, State Water Resources Control Board
Friends of the Earth
Sierra Club



FRIENDS OF THE RIVER

401 San Miguel Way, Sacramento, CA 95819 • 916/451-9955

April 24, 1979

Assemblyman Lawrence Kapiloff, Chairman
Assembly Water, Parks and Wildlife Committee
State Capitol
Sacramento, CA- 95814

Re: AB 1209 (Gage)

Dear Assemblyman Kapiloff,

Friends of the River urges you to support AB 1209. This bill will create a task force to study agricultural water conservation and report back to the legislature within two years.

Although there is a large amount of literature on specific isolated water conservation experiments, there is a pressing need for this information to be brought together into a comprehensive and usable form. We believe that the task force created by AB 1209 will compile the information needed to determine the specific measures necessary to implement agricultural water conservation.

Agriculture uses 85% of the water in California and just a 10% savings from agricultural water conservation would save over 3 million acre feet. The Department of Interior "Water Conservation Opportunities Study" estimated that over 38 million acre feet of water could be saved in the Western United States at a cost of from \$10 to \$40 per acre foot. Other benefits from agricultural water conservation include: energy savings, increased fertilizer application efficiency, increased water quality, and reductions in salinity problems and drainage needs.

Clearly, the state should investigate these cost-effective and environmentally sound agricultural water conservation measures before investing in new dams and other facilities costing over \$100 per acre foot. We urge you to support this bill.

Sincerely,

Tom Burton

Tom Burton

1979-80 Bill file

ASSEMBLY WATER, PARKS AND
WILDLIFE COMMITTEE

Bill No.	AB 1147
As Introduced	3/22/79
Author	Filante
Ways & Means	Yes
Rev. & Tax.	No
Analyst	Macdonald
URGENCY	No
DATE	4/25/79

Handwritten initials or marks.

ANALYSIS:

This bill would enact most of the legislative recommendations regarding water use efficiency made by the Governor's Commission to Review California Water Rights Law. The bill contains a series of separate changes as described below:

1. The California Constitution requires that water be reasonably used for beneficial purposes. Under existing law, a court, in determining reasonable beneficial use, may give substantial weight to local custom.

This bill would treat local custom as one factor, but not the exclusive factor, in determining the reasonableness of the beneficial use of water.

2. Under existing law a holder of an appropriate water right may forfeit that right where the holder fails to continue to use the water for a beneficial purpose.
 - a. A person who appropriated water prior to the passage of the Water Commission Act of 1914 may forfeit the water right after five years of nonuse.
 - b. A post-1914 appropriator may forfeit the water right after three years of nonuse.

This bill would make the forfeiture period five years and would make the forfeiture occur automatically.

3. This bill would preclude the application of the forfeiture doctrine where the reduction in the use of the water was due to water conservation efforts.
4. Under existing law it is unclear who owns wastewater: the original water supplier or the owner of the treatment plant.

This bill would confer the ownership rights to the owner of the treatment plant.

5. Under current law it is unclear whether the owner of a wastewater treatment plant must get permission from the State Water Resources Control Board to change the place of use, point of diversion, or purpose of use of the treated wastewater.

This bill would require the discharging party to obtain permission from the Board. The purpose of this requirement is to protect existing downstream users who have depended upon the return flow.

6. Under existing law it is unclear whether treated wastewater discharged into a stream for the purpose of enhancing instream beneficial uses may be appropriated by downstream users.

Under this bill, treated wastewater discharged into a stream for instream purposes would be protected from subsequent appropriation.

7. Under existing law it is unclear whether a person who salvages water must obtain a permit and a license from the State Water Resources Control Board in order to hold a valid right to the salvage water. Salvage water is generally thought of as water made available in a stream by changing vegetation types, usually involving the elimination of brush which would otherwise consume water.

This bill would allow a salvager to obtain a permit and license for the salvage water and would grant the salvager, within three years of the salvage effort, an exclusive right to the water.

8. According to common mythology, a proposal to transfer water or water rights may constitute nonuse or an unreasonable use of water. This is not the law, but many people believe that it is.

This bill would specifically state that the transfer of water or water rights, in itself, would not constitute nonuse or an unreasonable use of water. This specific declaration in the law would make people feel more comfortable about water transfers.

9. This bill would provide for an expeditious procedure for transfer of water or water rights where the duration of the proposed transfer would not exceed one year. The legislation would further authorize trial transfers where the actual impact on downstream beneficial uses would be difficult to determine in advance. Long-term transfers requiring a change in

place of use, point of diversion, or purpose of use would be allowed unless the transfer would result in substantial injury to any legal user of water. Transfers involving less than substantial injury may be approved and the injured party's remedy would be restricted to action for damages. Water rights quantified pursuant to a statutory adjudication would also be transferable.

10. Under existing law the only administrative action available to the State Water Resources Control Board regarding water users who violate the terms or conditions of the permits for license is revocation of their entitlements. Because of the extreme nature of the revocation remedy, it is rarely used. The Board may also discourage illegal water users by bringing court actions to enjoin use. The Board's injunctive authority against illegal users commonly takes too long to provide adequate relief during a water shortage.

This bill would provide the Board with the authority to issue cease and desist orders (1) against water users who violate the requirements of the permits or licenses, and (2) against illegal users. The Board could enforce such administrative orders by obtaining injunctive relief or through the court imposition of civil penalties of up to \$500 per day.

11. Under existing law the State Water Resources Control Board is not required to undertake a field investigation and

analysis regarding water right applications or applications for changes in place of use, point of diversion, or purpose of use.

This bill would require the Board to conduct field investigations and to prepare an analysis for all water right applications or changes involving the diversion of three cubic feet or less per second or storage of 200 acre-feet or less per year.

COST:

The State Water Resources Control Board estimates the annual increased cost would be about \$15,000 per year to the Board.

SUPPORT/OPPOSITION:

None indicated by author.

STAFF COMMENTS:

1. Giving a water right to water salvagers could involve substantial impacts upon the environment. Any public agency proposing major vegetation changes in order to increase water supply would be required to prepare an environmental impact report. A private individual would probably not be required to prepare an environmental impact report since his application to the Board for a permit could be up to three years after his salvage effort. Giving water rights to water salvagers is discussed under No. 7 within the analysis.
2. The overwhelming concern on water transfers (discussed as No. 8) has been the impact upon the secondary beneficiaries of the use of the water, such as farm laborers, agricultural shipping companies, towns and cities, etc.



League of California Cities

Sacramento, California

April 25, 1979

OFFICERS

President
Rex C. Clark
Council Member, Watsonville
First Vice President
Tom Bradley
Mayor, Los Angeles
Second Vice President
George Buljan
Council Member, Roseville
Past President
Duane Winters
Mayor, Fullerton
Executive Director
Don Benninghoven

DIRECTORS

Henry Alarcon
Council Member, El Centro
William H. (Harry) Armstrong
Council Member, Clovis
Earl "Topper" Arnett
Director of Parks and Recreation
Pacific Grove
C. Patrick Callahan
Mayor, Coronado
James Chambers
Police Chief, Concord
Dr. Thomas J. Clark
Mayor, Long Beach
Samuel Garlick
City Attorney, Burbank
Harold M. Hayes
Mayor, Montclair
Janet Gray Hayes
Mayor, San Jose
Sharon W. Hightower
Planning Director
Rancho Palms Verdes
Richard L. Holmes
Council Member, Concord
Richard L. Hughes
Council Member, Lodi
Quentin L. Kopp
Supervisor
San Francisco
Ernest J. Morales
Council Member, Fillmore
Richard G. Nagel
Council Member, El Segundo
Helen Putham
Mayor, Palatka
Edward E. Phillips
Director of Public Works, Hayward
Thomas Rupert
City Treasurer, Torrance
Pat Russell
Council Member, Los Angeles
Ann J. Tanner
City Clerk, Palo Alto
Michael Turnick
Fire Chief, Santa Rosa
Wayne Wedin
City Manager, Brea
Hena Winneb
Mayor, Hayward
Lionel Wilson
Mayor, Oakland
Pete Wilson
Mayor, San Diego
Doril B. Wright
Mayor, Port Huamano

Assemblyman William Filante
State Capitol
Sacramento, CA 95814

Re: AB 1147 - Notice of Support

Dear Assemblyman Filante:

We have preliminarily reviewed your AB 1147 and find it consistent with League policy in the subject matter area of happy to indicate League support for the proposal in its pre is anything we can do to assist you in forwarding the legislation we know.

Sincerely,

S. Russell Selix, Jr.
Attorney

SRS:nl



P. O. BOX 1712 (1010 - 11th STREET)
SACRAMENTO, CALIFORNIA 95808
PHONE 443-4887

April 25, 1979

The Honorable William J. Filante, M.D.
California State Assembly
State Capitol, Room 5130
Sacramento, Calif. 95814

Dear Dr. Filante:

The Agricultural Council of California, an association of farmer-owned cooperatives, is pleased to support the general thrust of your A.B. 1147. There are provisions in the bill that we find objectionable however, and we would be more than willing to work with your staff and Mr. Cliff Lee to see if some accommodations can be reached.

We have specific concerns with respect to those provisions dealing with local custom, cease and desist for unauthorized diversions and the valuation of appropriative rights.

Sincerely yours,

Jack Gualco
Governmental Relations Specialist

JG/ed

STATE WATER RESOURCES CONTROL BOARD

P. O. BOX 100, SACRAMENTO, CALIFORNIA 95801
(916) 322-0188



APR 25 1979

In Reply Refer
to: CMW: 221

Honorable William J. Filante
Assemblyman, 9th District
State Capitol, Room 5130
Sacramento, CA 95814

Dear Assemblyman Filante:

The State Water Resources Control Board (State Board) is in support of your bill, AB 1147, which would enact a series of changes in the law to promote more efficient use of the State's precious water supplies and to encourage water conservation.

Your bill, which would enact the legislative recommendations regarding water efficiency made by the Governor's Commission to Review California Water Rights Law, will encourage the most efficient use of water by removing legal impediments to water conservation and water rights transfer.

Mr. W. Don Maughan, the State Board's Chairman, will be available to testify on behalf of this important measure.

Sincerely,

A handwritten signature in cursive script that reads "Larry F. Walker".

Larry F. Walker
Executive Director

cc: All members of the Assembly Committee
on Water, Parks, and Wildlife

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN ASSEMBLY MAY 7, 1979

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL

No. 1147

Introduced by Assemblyman Filante

March 22, 1979

REFERRED TO COMMITTEE ON WATER, PARKS, AND WILDLIFE

An act to amend Section 1241 of, to add Sections 100.5, 109, 1011, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, to add Article 1.5 (commencing with Section 1210) ~~and Article 3.5 (commencing with Section 1233)~~ to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, ~~and to repeal Sections 1392 and 1629 of,~~ the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Filante (W., P., & W.). Water use.

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

This bill would declare state policy that conformity with local custom ~~should~~ *shall* not be *solely* determinative of reasonableness, but ~~may~~ *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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits such rights after 3 years of nonuse.

This bill would extend such period to 5 years and would specify that such reversion shall ~~automatically~~ occur upon ~~the lapse of such period~~ *a finding by the State Water Resources Control Board following notice to a permittee and a public hearing if requested by the permittee.* The bill would also provide that no forfeiture of an appropriative right shall occur where the appropriator fails to use the water because of water conservation efforts, and authorizes the ~~State Water Resources Control Board~~ *board* to require any person claiming the benefit of such provision to file periodic reports, as specified.

(3) Under existing law there are no provisions expressly governing the appropriation of salvage water, that is water that a person has added to the watercourse that would otherwise not have been available for beneficial use.

This bill would specify that the person making salvage water available shall, for 3 years from the date the water becomes available, have the exclusive right to appropriate and use such water. The bill would require a person seeking to appropriate such water to obtain a permit and license from the board and would specify powers and duties of the board in connection with such an appropriation.

~~(4)~~ Under existing law the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested.

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition.

~~(5)~~

(4) Under existing law, the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a water user is making an unauthorized diversion of water or is violating a term or condition of a permit or license to appropriate water. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules governing judicial review of any such order, would authorize the board to seek injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters.

~~(6)~~

(5) Under existing law, there are no provisions expressly governing the ownership of treated wastewater.

This bill would provide that the owner of a wastewater treatment plant shall hold the exclusive right to the treated wastewater as against the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting any permit or license to any person other than the treated wastewater producer for the appropriation of treated wastewater where the producer has introduced such water into the watercourse with the prior *stated* intention of maintaining or enhancing instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

~~(7) Under existing law, the valuation of appropriative rights held under permit or license for purposes of purchase or condemnation by public entities may not be in excess of the actual amount paid to the state for the permit or license.~~

~~This bill would repeal such provisions.~~

~~(8)~~

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board must find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative

right to temporarily transfer rights to the amount of water consumptively used by such person for a period of ~~one~~ 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or water rights, in itself, shall not constitute evidence of waste or the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

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

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

- 1 SECTION 1. Section 100.5 is added to the Water
- 2 Code, to read:
- 3 100.5. It is hereby declared to be the established
- 4 policy of this state that conformity of a use, method of use,
- 5 or method of diversion of water with local custom ~~should~~
- 6 ~~not be~~ *shall not be solely* determinative of its
- 7 reasonableness, but ~~may~~ *shall* be considered as one factor
- 8 to be weighed in the determination of the reasonableness
- 9 of the use, method of use, or method of diversion of water,

1 under the existing appropriative right. Where water
2 appropriated for irrigation purposes is not used by reason
3 of land fallowing or crop rotation, the reduced usage shall
4 be deemed water conservation for purposes of this
5 section.

6 SEC. 4. Article 1.5 (commencing with Section 1210)
7 is added to Chapter 1 of Part 2 of Division 2 of the Water
8 Code, to read:

9
10 Article 1.5. Treated Wastewater
11

12 1210. The owner of a wastewater treatment plant
13 shall hold the exclusive right to the treated wastewater as
14 against anyone who has supplied the water discharged
15 into the wastewater collection and treatment system,
16 including a person using water under a water service
17 contract, unless otherwise provided by agreement.

18 Nothing in this article shall affect the treatment plant
19 owner's obligations to any legal user of the discharged
20 treated wastewater.

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

25 1211. The owner of any wastewater treatment plant
26 may, in the name of the record owner of a permit or
27 license, petition the board for a change in the point of
28 diversion or rediversion, place of use, or purpose of use
29 from that specified in such entitlement, or for a change
30 in point of discharge, where and to the extent water
31 under such entitlement contributes to such discharge,
32 but such change may be made only upon the permission
33 of the board. The board shall review such changes
34 pursuant to the provisions of Chapter 10 (commencing
35 with Section 1700) of Part 2 of Division 2.

36 1212. The board shall not grant any permit or license
37 to any person other than the treated wastewater
38 producer for the appropriation of treated wastewater
39 where the producer has introduced such water into the
40 watercourse with the prior *stated* intention of

1 maintaining or enhancing fishery, wildlife, recreational,
2 or other instream beneficial uses. Holders of existing
3 water rights may not use or claim such water.

4 **SEC. 5.** Article 3.5 (commencing with Section 1233)
5 is added to Chapter 1 of Part 2 of Division 2 of the Water
6 Code, to read:

7

8

Article 3.5. Salvage Water

9

10 1233. Salvage water shall mean any water that a
11 person has added to the watercourse that would
12 otherwise have not been available for beneficial use. The
13 board shall recognize salvage water only where the
14 salvage efforts would not injure any lawful user of surface
15 water or groundwater and would not unreasonably affect
16 fish, wildlife, or other instream beneficial uses.

17 1234. The person making salvage water available
18 shall, for three years from the date the salvage water
19 becomes available, have the exclusive right to
20 appropriate and use such water. Salvage water shall be
21 appropriated pursuant to the provisions of this part. The
22 person seeking to appropriate such water shall carry the
23 burden of proving that the salvage effort makes
24 additional water available.

25 1235. The board may require, as a condition of the
26 permit or license, that an appropriator of salvage water
27 file periodic reports describing the extent and amount of
28 the water made available due to the appropriator's
29 salvage efforts. To the maximum extent possible, such
30 reports shall be made a part of other reports required by
31 the board relating to the use of water.

32 1236. This article shall not be construed to affect the
33 rights of any person making a beneficial use of salvage
34 water prior to the effective date of this article.

35 1237. As used in this article, "person" includes any
36 city, county, district, the state, or any department or
37 agency thereof, and the United States to the extent
38 authorized by law.

39 **SEC. 6.**

40 *SEC. 5.* Section 1241 of the Water Code is amended to

Article 5. Private Litigation

1
2
3 1850. Any factual or legal determinations made
4 pursuant to a valid, final cease and desist order shall be
5 conclusive and shall preclude any party to the order from
6 raising such issues in any subsequent administrative or
7 judicial proceeding.
8 1851. Nothing in this chapter shall be construed to
9 limit or abridge the right of any person to bring an action
10 for equitable or legal relief for harm caused by an
11 unauthorized diversion or a violation of a term or
12 condition of a permit or license. No such person shall be
13 required to exhaust any administrative remedy provided
14 by this chapter before bringing such an action.

O



May 24, 1979

The Honorable William J. Filante
California State Assembly
Room 5130 - State Capitol
Sacramento, CA. 95814

Re: Assembly Bill 1147

Dear Mr. Filante:

I would like to take this opportunity to express my appreciation to you for your cooperation in working out satisfactory amendments to your Assembly Bill 1147. I discussed the proposed amendments with the ACWA Legislative Committee at their meeting May 18 and I am pleased to advise you that the Committee unanimously voted to support Assembly Bill 1147 with the amendments we discussed.

Again, thank you for your cooperation in the development of these amendments.

Sincerely,

LOUIS B. ALLEN, JR.,
ASSISTANT EXECUTIVE DIRECTOR

LBA:SEL

AMENDED IN ASSEMBLY MAY 25, 1979

AMENDED IN ASSEMBLY MAY 7, 1979

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL

No. 1147

Introduced by Assemblyman Filante

March 22, 1979

REFERRED TO COMMITTEE ON WATER, PARKS, AND WILDLIFE

An act to amend Section 1241 of, to add Sections 100.5, 109, 1011, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, to add Article 1.5 (commencing with Section 1210) to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Filante (W., P., & W.). Water use.

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

This bill would declare state policy that conformity with local custom shall not be solely determinative of 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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits such rights after 3 years of nonuse.

This bill would extend such period to 5 years and would

specify that such reversion shall occur upon a finding by the State Water Resources Control Board following notice to a permittee and a public hearing if requested by the permittee. The bill would also provide that no forfeiture of an appropriative right shall occur where the appropriator fails to use the water because of water conservation efforts, and authorizes the board to require any person claiming the benefit of such provision to file periodic reports, as specified.

(3) Under existing law, the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested.

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition.

(4) Under existing law, the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a ~~water user is making an unauthorized diversion of water or~~ *person holding a permit or license to appropriate water* is violating a term or condition of ~~a~~ *the* permit or license ~~to appropriate water~~. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules governing judicial review of any such order, would authorize the board to seek injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters.

(5) Under existing law, there are no provisions expressly governing the ownership of treated wastewater.

This bill would provide that the owner of a wastewater treatment plant shall hold the exclusive right to the treated wastewater as against the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting any permit or license to any person other than the treated wastewater producer for the appropriation of treated wastewater where the producer has introduced such water into the watercourse with the prior stated intention of maintaining or enhancing instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board must find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or water rights, in itself, shall not constitute evidence of waste or

the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

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

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

1 SECTION 1. Section 100.5 is added to the Water
2 Code, to read:

3 100.5. It is hereby declared to be the established
4 policy of this state that conformity of a use, method of use,
5 or method of diversion of water with local custom shall
6 not be solely determinative of its reasonableness, but shall
7 be considered as one factor to be weighed in the
8 determination of the reasonableness of the use, method
9 of use, or method of diversion of water, within the
10 meaning of Section 2 of Article X of the California
11 Constitution.

12 SEC. 2. Section 109 is added to the Water Code, to
13 read:

14 109. The Legislature hereby finds and declares that
15 the growing water needs of the state require the use of
16 water in a more efficient manner and that the efficient
17 use of water requires greater certainty in the definition
18 of property rights to the use of water and greater
19 transferability of such rights. It is hereby declared to be
20 the established policy of this state to encourage the
21 voluntary transfer of water and water rights where
22 consistent with the public welfare of the place of export
23 and the place of import.

24 SEC. 3. Section 1011 is added to the Water Code, to
25 read:

26 1011. When any person entitled to the use of water
27 under an appropriative right fails to use all or any part of
28 the water because of water conservation efforts, any
29 cessation or reduction in the use of such appropriated
30 water shall be deemed equivalent to a reasonable

1 beneficial use of water to the extent of such cessation or
2 reduction in use. No forfeiture of the appropriative right
3 to the water conserved shall occur upon the lapse of the
4 forfeiture period applicable to water appropriated
5 pursuant to the Water Commission Act or this code or the
6 forfeiture period applicable to water appropriated prior
7 to December 19, 1914.

8 The board may require that any user of water who
9 seeks the benefit of this section file periodic reports
10 describing the extent and amount of the reduction in
11 water use due to water conservation efforts. To the
12 maximum extent possible, such reports shall be made a
13 part of other reports ~~for two consecutive years~~ required
14 by the board relating to the use of water. Failure to file
15 such reports *for two consecutive years* shall deprive the
16 user of water of the benefits of this section.

17 For purposes of this section, the term "water
18 conservation" shall mean the use of less water to
19 accomplish the same purpose or purposes of use allowed
20 under the existing appropriative right. Where water
21 appropriated for irrigation purposes is not used by reason
22 of land fallowing or crop rotation, the reduced usage shall
23 be deemed water conservation for purposes of this
24 section.

25 SEC. 4. Article 1.5 (commencing with Section 1210)
26 is added to Chapter 1 of Part 2 of Division 2 of the Water
27 Code, to read:

28

29 Article 1.5. Treated Wastewater

30

31 1210. The owner of a wastewater treatment plant
32 shall hold the exclusive right to the treated wastewater as
33 against anyone who has supplied the water discharged
34 into the wastewater collection and treatment system,
35 including a person using water under a water service
36 contract, unless otherwise provided by agreement.

37 Nothing in this article shall affect the treatment plant
38 owner's obligations to any legal user of the discharged
39 treated wastewater.

40 Nothing in this article is intended to interfere with the

1 regulatory authority of the board or any California
2 regional water quality control board under Division 7
3 (commencing with Section 13000).

4 1211. The owner of any wastewater treatment plant
5 may, in the name of the record owner of a permit or
6 license, petition the board for a change in the point of
7 diversion or rediversion, place of use, or purpose of use
8 from that specified in such entitlement, or for a change
9 in point of discharge, where and to the extent water
10 under such entitlement contributes to such discharge,
11 but such change may be made only upon the permission
12 of the board. The board shall review such changes
13 pursuant to the provisions of Chapter 10 (commencing
14 with Section 1700) of Part 2 of Division 2.

15 1212. The board shall not grant any permit or license
16 to any person other than the treated wastewater
17 producer for the appropriation of treated wastewater
18 where the producer has introduced such water into the
19 watercourse with the prior stated intention of
20 maintaining or enhancing fishery, wildlife, recreational,
21 or other instream beneficial uses. Holders of existing
22 water rights may not use or claim such water.

23 SEC. 5. Section 1241 of the Water Code is amended to
24 read:

25 1241. When the person entitled to the use of water
26 fails to use beneficially all or any part of the water
27 claimed by him, for which a right of use has vested, for
28 the purpose for which it was appropriated or adjudicated,
29 for a period of five years, such unused water ~~reverts~~ *may*
30 *revert* to the public and shall, *if reverted*, be regarded as
31 unappropriated public water. Such reversion shall occur
32 upon a finding by the board following notice to the
33 permittee and a public hearing if requested by the
34 permittee.

35 SEC. 6. Section 1244 is added to the Water Code, to
36 read:

37 1244. The sale, lease, exchange, or transfer of water or
38 water rights, in itself, shall not constitute evidence of
39 waste or unreasonable use, unreasonable method of use,
40 or unreasonable method of diversion and shall not affect

1 produced, with reasonable diligence, at the prior
2 administrative hearing or whether the evidence was
3 improperly excluded. In every case, the court shall
4 exercise its independent judgment on the evidence.

5 (e) All funds recovered pursuant to this section shall
6 be transferred to the General Fund of the state.

7

8

Article 5. Private Litigation

9

10 1850. Any factual or legal determinations made
11 pursuant to a valid, final cease and desist order shall be
12 conclusive and shall preclude any party to the order from
13 raising such issues in any subsequent administrative or
14 judicial proceeding.

15 1851. Nothing in this chapter shall be construed to
16 limit or abridge the right of any person to bring an action
17 for equitable or legal relief for harm caused by an
18 unauthorized diversion or a violation of a term or
19 condition of a permit or license. No such person shall be
20 required to exhaust any administrative remedy provided
21 by this chapter before bringing such an action.

O

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

WAYS AND MEANS STATE ANALYSIS

DP
101

BILL NUMBER AB 1147 AUTHOR Pilante AMENDED 5/25 ITEM 101
INDEX Water POLICY COMMITTEE W. P. & W. CONSULTANT Ordway

SUBJECT: Water Use

<u>FISCAL SUMMARY:</u>	<u>FUND</u> (G, S, N, B, P, or L)	<u>1978/79 FY</u>	<u>1979/80 FY</u>	<u>1980/81 FY</u>
State Cost:	<u>G</u>		<u>Minor</u>	<u>Minor</u>

Urgency: Yes No

SUMMARY:

AB 1147 would enact most of the Legislative recommendations regarding water use efficiency which were made by the Governor's Commission to Review California Water Rights Law.

FISCAL IMPACT:

Additional costs to the State Water Resources Control Board as a result of implementing AB 1147 are anticipated to be minor.

ANALYSIS:

AB 1147 would make numerous revisions to the Water Code, such as:

1. Treating local custom as one factor, but not the exclusive factor, in determining the reasonableness of the beneficial use of water.
2. Providing that no forfeiture of an appropriate right shall occur when the appropriation fails to use the water because of water conservation efforts.

Specify that the owner of a wastewater treatment plant holds the exclusive right to the treated water, unless otherwise provided by agreement.

4. Permitting the transfer of any water right, including riparian rights, as specified.
5. Authorizing the Water Quality Control Board to issue, cease and desist orders against water uses who violate the requirements of the permits or licenses and against illegal uses.

RECOMMENDATION:

Do pass - consent.

I know of no opposition.

DB

db



942 Market St., Suite 505, San Francisco, CA 94102 (415) 986-1532
Legislative Office:
1107 Ninth Street, #1031, Forum Building, Sacramento, CA 95814 (916) 442-7215

May 29, 1979

The Honorable William Filante
State Capitol
Sacramento, CA 95814

Re: AB 1147

Dear Mr. Filante:

The League of Women Voters of California supports your bill, AB 1147, which deals with the determination of beneficial use and transfer of water rights.

In a recently completed study of several aspects concerning water, the overriding concern of California League members was conservation. Specifically, we support measures that encourage conservation through changes in water rights law and through the use of reclaimed water for various appropriate uses. The extension of the period of non-use of an appropriative water right and the provisions that deal with the ownership of treated wastewater in AB 1147 are measures the League strongly supports.

Since existing water rights law does not encourage conservation, and in fact may discourage it, AB 1147 provides a needed change. Most importantly, the bill strengthens the beneficial use concept by reducing the influence of local custom in determining what is a beneficial use. It is a bill designed to provide better overall management of our limited supply of water.

If we can be of any assistance to you in your efforts to promote this legislation, please contact our legislative advocate, Margaret Herman, at 442-7215.

Sincerely,

LEAGUE OF WOMEN VOTERS OF CALIFORNIA



Susan Rice
President

Law Offices of

HELM, BUDINGER & LEMIEUX

AN ASSOCIATION, INCLUDING A PROFESSIONAL CORPORATION

RALPH B. HELM
JEROME M. BUDINGER
WAYNE K. LEMIEUX

4444 RIVERSIDE DRIVE, SUITE 201
TOLUCA LAKE, CALIFORNIA 91303
(213) 849-8473

File

June 11, 1979

The Honorable William Filante
Member of the Assembly
State Capitol
Sacramento, CA 95814

Re: Assembly Bill 1147

Mr. McDonald, Consultant for the Assembly Water, Parks and Wildlife Committee, suggested that you might be interested in the enclosed correspondence which was mailed to Assemblyman Kapiloff in response his request for comments concerning proposed legislation on the subject of Water Reclamation. The comments contained in the enclosed correspondence are apropos to AB-1147.

A couple of other provisions of AB-1147 are of concern to us. First, the whole subject of "instream uses" will no doubt conjure up great debate. We suspect that AB-1147 could be a successful vehicle for introducing changes in water reclamation law or changes in instream use law. However, we also suspect that changes in two such important areas cannot be wrought by a single piece of legislation without undue delay.

Finally, proposed Section 1745 (page 10, commencing at line 18) would make the transference of court decreed water rights subject to other provisions of the bill. Inasmuch as court decreed water rights are often inexorably bound to a court decreed physical solution, we believe that the terms and conditions of transfer cannot be altered except as provided in the court decree without the imposition of an unconstitutional interference with the judicial branch of government by the legislature. Thus, we believe that Section 1745 should either be stricken or should be amended to provide that it may be permissively invoked by the Court.

Thank you for the opportunity to address you in this matter. If we can be of any further assistance, please do not hesitate to call or write.

HELM, BUDINGER & LEMIEUX

Wayne K. Lemieux
WKL/rg
cc: Assemblyman Lawrence Kapiloff

JUN 14 1979

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

ANALYSIS OF ASSEMBLY BILL NO. 1147 (Filante)
As Amended in Assembly May 25, 1979
1979-80 Session

AB 1147 (Am. 5-25-79)

Fiscal Effect:

Cost: Approximatel: \$15,000 annually to the General Fund.

Revenue: Possible minor increases in fees to the State Water Resources Control Board.

Analysis:

This bill would enact several recommendations to improve the efficiency of water use which were made by the Governor's Commission to Review California Water Rights Law. The purpose of these changes is to more precisely define water rights and to encourage voluntary water transfers. The commission was created in May 1977 and issued its final report in December 1978. Specifically the bill would do the following:

Local Custom and Beneficial Use. Declare that local custom should be considered as one factor, but not the only factor, in determining whether a use of water is a reasonable beneficial use as required by the California Constitution.

Water Conservation. Provide that persons who hold appropriative rights to water will not lose any of their rights if they undertake conservation measures that use less water to accomplish the same purpose. The water user would have to file reports with the State Water Resources Control Board (SWRCB) to substantiate the conservation measures. Under existing law, water users may forfeit their rights if they fail to continue using water.

Forfeiture Period. Establish a uniform forfeiture period of 5 years of nonuse, after which the right to use the water would revert to the public upon a finding by the

AB 1147 (continued)

SWRCB. A forfeiture period of either 3 or 5 years applies under existing law depending on when the appropriative right was secured.

Treated Wastewater. Establish that the owner of a wastewater treatment plant has an exclusive right to the discharged water as against those who discharge water into the treatment system. Provides that permission from the SWRCB is required before a wastewater treatment plant may change the point of diversion or discharge, place of use or purpose of use of the wastewater.

Wastewater for Instream Use. Prohibit appropriation by downstream users of treated wastewater introduced into a stream to enhance fishery, wildlife, recreational or other instream beneficial uses.

Water Transfers. Declare, in accordance with existing law, that the sale, lease, exchange or transfer of water or water rights is not evidence of unreasonable use and does not provide a basis for forfeiture of a water right.

Provide an expeditious procedure for approval of temporary exchanges or transfers of water or water rights for periods of less than one year. The proposed transfer would automatically become effective after 30 days unless the SWRCB objects. Such transfers would be exempt from the requirements of the California Environmental Quality Act (CEQA) and would qualify only if they will not injure any legal water user or unreasonably affect instream beneficial water uses.

Authorize the SWRCB to approve trial transfers of water or water rights where the precise effect of the transfer is difficult to determine in advance after providing notice and an opportunity for hearing if the proposed transfer is "unlikely" to cause substantial injury to other legal water users and would not unreasonably affect instream beneficial uses. Trial transfers would

be limited to one year. Trial transfers could be converted into long-term water transfers if the SWRCB finds that other legal water users and instream uses will not be harmed.

Procedure for Minor Protested Applications. Require the Division of Water Rights of the SWRCB to conduct field investigations and prepare a staff analysis for all protested applications or petitions for change that involve water diversions of less than 3 cubic feet per second or storage of less than 200 acre-feet per year. The bill authorizes the board to act on the basis of the staff analysis unless one of the parties requests a hearing on specific unresolved issues. Existing law requires hearings unless waived by the parties.

Cease and Desist Orders. Authorize the SWRCB to issue cease and desist orders against water users who violate the conditions of their permit. Under existing law, the board's only recourse against a person violating the conditions of his permit is to revoke the permit. The cease and desist orders would be subject to judicial review. The Attorney General, upon a request by the board, would enforce such orders by seeking injunctive relief and/or a civil penalty of up to \$500 per day.

The SWRCB has made an estimate of the fiscal effect of the water use efficiency recommendations of the Governor's Commission. This bill includes nine of the twelve recommendations (some in modified form) and should have a fiscal impact similar to that of the complete set of recommendations. The board estimated that the use of field investigations for minor protested applications would reduce the number of hearings and save \$50,000 annually in staff costs. This savings would be offset by increased costs to enforce the conditions of water permits through cease and desist orders. The board estimated that an additional \$15,000 would be required annually to carry out the other recommendations. The board has not adequately estimated costs for the cease and desist and enforcement provisions of the bill. Based on past budget requests of

AB 1147 (continued)

the board, significant costs could result if the board undertakes an extensive program to police water rights in California.

The board may receive some minor revenue from permit and other fees as a result of this bill.

23

ASSEMBLY THIRD READING

AB 1147 (Filante) As Amended: May 25, 1979

ASSEMBLY ACTIONS:

COMMITTEE W., P., & W. VOTE 8-0 COMMITTEE W. & M. VOTE 12-3

Ayes: Ayes: Chacon, Goggin, Hart, Hayden, Knox,
Imbrecht, Levine, Mori, Stirling,
Ryan, N. Waters, Boatwright

Nays: Nays: Leonard, Statham, Duffy

DIGEST

This bill enacts a number of the legislative recommendations of the Governor's Commission to Review California Water Rights Law to more precisely define water rights and to encourage voluntary water transfers.

Specifically, the bill does the following:

- 1) Current law requires that water be reasonably used for beneficial purposes, and a court may give substantial weight to local custom in determining reasonable beneficial use.

This bill declares state policy that local custom is one factor, but not the exclusive factor, in determining reasonable beneficial use of water.

- 2) Current law states that a holder of an appropriative water right may forfeit that right if the water is not used for a beneficial purpose for a period of three or five years. Water not used because of water conservation is counted as nonuse liable to forfeiture of the appropriative right.

This bill establishes a uniform forfeiture period for appropriative water rights of five years of nonuse, after which the right to use water would revert to the public upon finding by the Water Resources Control Board and a public hearing, if requested. The bill provides that no forfeiture of an appropriative water right will occur where the appropriator fails to use the water because of water conservation efforts.

- 3) Current law requires the Water Resources Control Board to hold a hearing if any application for a permit to appropriate water or petition for change in place of use, point of diversion, and purpose of use is protested.

This bill requires the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions. The bill allows the board to act on the staff analysis without holding a hearing, unless a written request for a hearing is received from the protesting party within 30 days.

- continued -

- 4) Current law provides that the Water Resources Control Board may revoke a permit or license to appropriate water if any term or condition of the permit is violated. Injunctive relief against illegal users may also be sought.

This bill authorizes the board to issue cease and desist orders against water users who violate the conditions of their permit, with such orders being subject to judicial review. The Attorney General, upon the board's request would enforce the orders by seeking injunctive relief and/or a civil penalty of up to \$500 per day.

- 5) Current law does not expressly provide for the ownership of treated wastewater.

This bill establishes that the owner of a wastewater treatment plant has an exclusive right to the discharged water as against the original water supplier. The bill provides that permission from the Water Resources Control Board is required before a wastewater treatment plant may change the point of diversion or discharge, place of use or purpose of use of the wastewater. The bill also prohibits the appropriation by downstream users of treated wastewater introduced into a stream to enhance fishery, wildlife, recreational or other instream beneficial uses.

- 6) Current law does not say that a proposal to transfer water or water rights may constitute nonuse or an unreasonable use of water.

This bill clarifies the issue by specifically stating that the transfer of water or water rights, in itself, does not constitute nonuse or an unreasonable use of water. The bill provides an expeditious procedure for approval of trial exchanges or transfers of water or water rights for periods of less than one year. Proposed transfers would qualify only if they will not injure any legal water user or unreasonably affect instream beneficial water uses. Trial transfers could be converted into long-term water transfers of over a year if the Water Resources Control Board finds that other legal water users and instream uses will not be harmed.

FISCAL EFFECT

The Water Resources Control Board estimates the increased cost to the board will be \$15,000 per year.

The Legislative Analyst reports that additional undetermined but significant costs could result if the board undertakes an extensive program to police water rights in California.

AMENDED IN SENATE JULY 18, 1979
AMENDED IN ASSEMBLY MAY 25, 1979
AMENDED IN ASSEMBLY MAY 7, 1979

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL

No. 1147

Introduced by Assemblyman Filante

March 22, 1979

REFERRED TO COMMITTEE ON WATER, PARKS, AND WILDLIFE

An act to amend Section 1241 of, to add Sections 100.5, 109, 1011, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, to add Article 1.5 (commencing with Section 1210) to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Filante (W., P., & W.). Water use.

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

This bill would declare state policy that conformity with local custom shall not be solely determinative of 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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits

such rights after 3 years of nonuse.

This bill would extend such period to 5 years and would specify that such reversion shall occur upon a finding by the State Water Resources Control Board following notice to a permittee and a public hearing if requested by the permittee. The bill would also provide that no forfeiture of an appropriative right shall occur where the appropriator fails to use the water because of water conservation efforts, and authorizes the board to require any person claiming the benefit of such provision to file periodic reports, as specified.

(3) Under existing law, the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested.

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition.

(4) Under existing law, the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a person holding a permit or license to appropriate water is violating a term or condition of the permit or license. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules governing judicial review of any such order, would authorize the board to seek injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters.

(5) Under existing law, there are no provisions expressly governing the ownership of treated waste water.

This bill would provide that 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 the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting 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 instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board must find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or

water rights, in itself, shall not constitute evidence of waste or the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

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

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

1 SECTION 1. Section 100.5 is added to the Water
2 Code, to read:

3 100.5. It is hereby declared to be the established
4 policy of this state that conformity of a use, method of use,
5 or method of diversion of water with local custom shall
6 not be solely determinative of its reasonableness, but shall
7 be considered as one factor to be weighed in the
8 determination of the reasonableness of the use, method
9 of use, or method of diversion of water, within the
10 meaning of Section 2 of Article X of the California
11 Constitution.

12 SEC. 2. Section 109 is added to the Water Code, to
13 read:

14 109. The Legislature hereby finds and declares that
15 the growing water needs of the state require the use of
16 water in a more efficient manner and that the efficient
17 use of water requires greater certainty in the definition
18 of property rights to the use of water and greater
19 transferability of such rights. It is hereby declared to be
20 the established policy of this state to encourage the
21 voluntary transfer of water and water rights where
22 consistent with the public welfare of the place of export
23 and the place of import.

24 SEC. 3. Section 1011 is added to the Water Code, to
25 read:

26 1011. When any person entitled to the use of water
27 under an appropriative right fails to use all or any part of
28 the water because of water conservation efforts, any
29 cessation or reduction in the use of such appropriated

1 water shall be deemed equivalent to a reasonable
2 beneficial use of water to the extent of such cessation or
3 reduction in use. No forfeiture of the appropriative right
4 to the water conserved shall occur upon the lapse of the
5 forfeiture period applicable to water appropriated
6 pursuant to the Water Commission Act or this code or the
7 forfeiture period applicable to water appropriated prior
8 to December 19, 1914.

9 The board may require that any user of water who
10 seeks the benefit of this section file periodic reports
11 describing the extent and amount of the reduction in
12 water use due to water conservation efforts. To the
13 maximum extent possible, such reports shall be made a
14 part of other reports required by the board relating to the
15 use of water. Failure to file such reports for two
16 consecutive years shall deprive the user of water of the
17 benefits of this section.

18 For purposes of this section, the term "water
19 conservation" shall mean the use of less water to
20 accomplish the same purpose or purposes of use allowed
21 under the existing appropriative right. Where water
22 appropriated for irrigation purposes is not used by reason
23 of land fallowing or crop rotation, the reduced usage shall
24 be deemed water conservation for purposes of this
25 section.

26 SEC. 4. Article 1.5 (commencing with Section 1210)
27 is added to Chapter 1 of Part 2 of Division 2 of the Water
28 Code, to read:

29
30 Article 1.5. Treated Waste Water
31

32 1210. The owner of a waste water treatment plant
33 *operated for the purpose of treating wastes from a*
34 *sanitary sewer system* shall hold the exclusive right to the
35 treated waste water as against anyone who has supplied
36 the water discharged into the waste water collection and
37 treatment system, including a person using water under
38 a water service contract, unless otherwise provided by
39 agreement.

40 Nothing in this article shall affect the treatment plant

1 owner's obligations to any legal user of the discharged
2 treated waste water.

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

7 1211. The owner of any wastewater treatment plant
8 may, in the name of the record owner of a permit or
9 license, petition the board for a change in the point of
10 diversion or rediversion, place of use, or purpose of use
11 from that specified in such entitlement, or for a change
12 in point of discharge, where and to the extent water
13 under such entitlement contributes to such discharge,
14 but such change may be made only upon the permission
15 of the board. The board shall review such changes
16 pursuant to the provisions of Chapter 10 (commencing
17 with Section 1700) of Part 2 of Division 2.

18 1212. The board shall not grant any permit or license
19 to any person other than the treated waste water
20 producer for the appropriation of treated waste water
21 where the producer has introduced such water into the
22 watercourse with the prior stated intention of
23 maintaining or enhancing fishery, wildlife, recreational,
24 or other instream beneficial uses. Holders of existing
25 water rights may not use or claim such water.

26 SEC. 5. Section 1241 of the Water Code is amended to
27 read:

28 1241. When the person entitled to the use of water
29 fails to use beneficially all or any part of the water
30 claimed by him, for which a right of use has vested, for
31 the purpose for which it was appropriated or adjudicated,
32 for a period of five years, such unused water may revert
33 to the public and shall, if reverted, be regarded as
34 unappropriated public water. Such reversion shall occur
35 upon a finding by the board following notice to the
36 permittee and a public hearing if requested by the
37 permittee.

38 SEC. 6. Section 1244 is added to the Water Code, to
39 read:

40 1244. The sale, lease, exchange, or transfer of water or

1 Article 5. Private Litigation

2

3 1850. Any factual or legal determinations made
4 pursuant to a valid, final cease and desist order shall be
5 conclusive and shall preclude any party to the order from
6 raising such issues in any subsequent administrative or
7 judicial proceeding.

8 1851. Nothing in this chapter shall be construed to
9 limit or abridge the right of any person to bring an action
10 for equitable or legal relief for harm caused by an
11 unauthorized diversion or a violation of a term or
12 condition of a permit or license. No such person shall be
13 required to exhaust any administrative remedy provided
14 by this chapter before bringing such an action.

O

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

ANALYSIS OF ASSEMBLY BILL NO. 1147 (Filante)
As Amended in Senate June 19, 1980
1979-80 Session

AB 1147 (Am. 6-19-80)

Fiscal Effect:

Cost: Approximately \$15,000 annually to the General Fund.

Revenue: State: Possible minor increases in fees to the State Water Resources Control Board.

Local: Undetermined minor revenues to Marin Municipal Water District.

Analysis:

This bill enacts several recommendations to improve the efficiency of water use which were made by the Governor's Commission to Review California Water Rights Law. The purpose of these changes is to more precisely define water rights and to encourage voluntary water transfers. The commission was created in May 1977 and issued its final report in December 1978. Specifically the bill would do the following:

Local Custom and Beneficial Use. Declare that local custom should be considered as one factor, but not the only factor, in determining whether a use of water is a reasonable beneficial use as required by the California Constitution.

Forfeiture Period. Establish a uniform forfeiture period of 5 years of nonuse, after which the right to use the water would revert to the public upon a finding by the SWRCB. A forfeiture period of either 3 or 5 years applies under existing law depending on when the appropriative right was secured.

Treated Wastewater. Establish that the owner of a wastewater treatment plant has an exclusive right to the discharged water as against those who discharge water into the treatment system. Provides that permission from the SWRCB is required before a wastewater treatment plant may change the point of diversion or discharge, place of use or purpose of use of the wastewater.

Wastewater for Instream Use. Prohibit appropriation by downstream users of treated wastewater introduced into a stream to enhance fishery, wildlife, recreational or other instream beneficial uses.

Water Transfers. Declare, in accordance with existing law, that the sale, lease, exchange or transfer of water or water rights is not evidence of unreasonable use and does not provide a basis for forfeiture of a water right.

Provide an expeditious procedure for approval of temporary exchanges or transfers of water or water rights for periods of less than one year. The proposed transfer would automatically become effective after 30 days unless the SWRCB objects. Such transfers would be exempt from the requirements of the California Environmental Quality Act (CEQA) and would qualify only if they will not injure any legal water user or unreasonably affect instream beneficial water uses.

Authorize the SWRCB to approve trial transfers of water or water rights where the precise effect of the transfer is difficult to determine in advance after providing notice and an opportunity for hearing if the proposed transfer is "unlikely" to cause substantial injury to other legal water users and would not unreasonably affect instream beneficial uses. Trial transfers would

be limited to one year. Trial transfers could be converted into long-term water transfers if the SWRCB finds that other legal water users and instream uses will not be harmed. Following the expiration of the temporary, trial or long-term transfer period, all rights shall automatically revert to the original holders of such right without any board action.

Procedure for Minor Protested Applications. Require the Division of Water Rights of the SWRCB to conduct field investigations and prepare a staff analysis for all protested applications or petitions for change that involve water diversions of less than 3 cubic feet per second or storage of less than 200 acre-feet per year. The bill authorizes the board to act on the basis of the staff analysis unless one of the parties requests a hearing on specific unresolved issues. Existing law requires hearings unless waived by the parties.

Cease and Desist Orders. Authorize the SWRCB to issue cease and desist orders against water users who violate the conditions of their permit. Under existing law, the board's only recourse against a person violating the conditions of his permit is to revoke the permit. The cease and desist orders would be subject to judicial review. The Attorney General, upon a request by the board, would enforce such orders by seeking injunctive relief and/or a civil penalty of up to \$500 per day.

Marin Municipal Water District

Authorize Marin Municipal Water District to sell water outside the district to any person, firm, corporation, public agency or other consumer. Under existing law the district is authorized to sell a maximum of one percent of the total water supply to consumers outside the district.

Fiscal Effect:

The SWRCB has made an estimate of the fiscal effect of the water use efficiency recommendations of the Governor's Commission. This bill includes eight of the twelve recommendations (some in modified form) and should have a fiscal impact similar to that of the complete set of recommendations. The board estimated that the use of field investigations for minor protested applications would reduce the number of hearings and save \$50,000 annually in staff costs. This savings would be offset by increased costs to enforce the conditions of water permits through cease and desist orders. The board estimated that an additional \$15,000 would be required annually to carry out the other recommendations. The board has not adequately estimated costs for the cease and desist and enforcement provisions of the bill. Based on past budget requests of the board, significant costs could result if the board undertakes an extensive program to police water rights in California.

The board may receive some minor revenue from permit and other fees as a result of this bill.

We estimate that the Marin Municipal Water District will receive undetermined but probably minor increase in local revenues under this bill.



*To Dave Abelson
12/12/79*
*if he
doesn't handle
this soon send
it back for
steps to worry
about -*

August 13, 1979

The Honorable William J. Filante
California State Assembly
Room 5130 - State Capitol
Sacramento, CA. 95814

Re: Assembly Bill 1147

Dear Mr. Filante:

The legislative committee of the Association of California Water Agencies has recently reviewed the amendments to your Assembly Bill 1147 suggested by the State Water Resources Control Board as attachments to their letter of June 28, 1979. We appreciate the opportunity to comment on those amendments.

Attachment 1: We do not object to the proposed modification of the Water Code section 1241 relating to the forfeiture of vested water rights. However, we do feel that the language suggested by the State Board is inconsistent with terminology used elsewhere in the section. It is therefore suggested in the last sentence of the section that the phrase "user of water" be changed to "person entitled to the use of water" and that the term "such user" be changed to "such person".

Attachment 2: We object to the inclusion of the proposed provisions relating to salvage water. As noted in the State Board's comment the salvager would "probably" (their term) hold the right to the use of water which he salvages. We believe that that right exists. The inclusion of the State Board's suggested procedure would require the holder of a water right to go through an additional administrative procedure and obtain an additional permit to use water to which he already has a right. This is both unnecessary and costly.

Attachment 3: We also object to the inclusion of the provisions relating to "developed water". The basis of this objection is similar to our objection relating to salvage water in that the individual would be required to obtain an additional permit for water to which he already has a right.

Attachment 4: We object to the suggested amendment to Water Code section 1702. This amendment would subject a water right holder to additional permit terms and conditions when he is using water to which

*✓ will Done
Abelson - comments*

1127 11th street, #305 • sacramento, ca. 95814 • (916) 441-4545 • john kidd, president
• nat. l. eggert, vice president • john p. fraser, executive director and general counsel

he is legally entitled and he is doing nothing more than requesting a change in his point of diversion or place or purpose of use.

OK *??*
Attachment 5: We do not object to the proposed change. However, the provisions of the draft amendment are incomplete in that they do not include similar amendments to the Municipal Water District Law, or the Public Utility District Act. Similar changes should be made to Water Code section 71612 relating to municipal water districts and Public Utilities Code section 16473 relating to public utility districts.

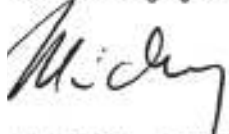
Attachment 6: We do not object to this proposal.

OK
Lastly, we would like to suggest an additional amendment for your consideration. The original version of your AB 1147 included the repeal of Water Code sections 1392 and 1629 as recommended by the Governor's Commission to Review California Water Rights Law. These sections specify that water rights permittees and licensees accept the permit or license on the condition that no value whatsoever attaches to the permit or license. I do not recall why these provisions were removed from the bill. However, the ACWA legislative committee has suggested that these amendments again be placed in AB 1147 and we submit this suggestion for your consideration.

*Have
objection
such
shd
in law*

Again, I would like to thank you for the courtesy you have extended in affording us an opportunity to review the State Board's draft amendments and for your thoughtfulness and cooperation throughout the discussions on this bill.

Sincerely yours,



LOUIS B. ALLEN JR.,
ASSISTANT EXECUTIVE DIRECTOR

LBA:SEL

cc: W. Don Maughan, Chairman, State Water Resources Control Board



ROTH & THORNER -- ATTORNEYS AT LAW

1050 NORTHGATE DRIVE, P.O. BOX G, SAN RAFAEL, CA 94903 (415) 479-5623

August 17, 1979

Assemblyman William Filante
State Capital
Sacramento, California 95814

Re: A.B. 1147

Dear Bill:

I have reviewed the amendments suggested to A.B. 1147 by the SWRCB in their letter of June 28, 1979, and in particular Attachment 5 thereto regarding removal of surplus water sale restrictions.

I concur that such restrictions should be removed as recommended by the Governor's Commission to Review California Water Rights Law (see page 68 of the Commission's Final Report).

In addition to the reasons mentioned in the Commission's report for removal of such restrictions, I remind you of the tremendous legal headaches the MMWD went through because of similar restrictions found in Water Code §71611 and §71612. To refresh your memory, I enclose copies of my legal opinions of June 13 and July 16, 1973. Solution to these problems cost the District a great deal of time and money through dealings with surplus users, LAFCO proceedings, sponsorship of special legislation (resulting in enactment of Water Code §71612.5), and negotiation of a contract with the North Marin CWD to serve the MMWD's surplus customers during the drought. E

Therefore in addition to the changes in the law suggested in attachment 5 to the SWRCB's letter, Water Code §71611 should be amended to read as follows:

"A district may sell water to any person firm, public or private corporation, or public agency, or other consumer within or without the district."

and Water Code §71612 and §71612.5 should be repealed.

Assemblyman William Filante
August 17, 1979
Page 2

Furthermore, the Bolinas Public Utility District has just recently gone through a similar legal headache involving over a year's worth of LAFCO hearings because of Public Utilities Code §16473. That section should also be amended to remove the restrictions on sale of water outside of a district.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Thorner', with a long horizontal flourish extending to the right.

Tom Thorner

TT:ks
cc: Dietrich Stroeh
Enc.



THE PLANNING AND CONSERVATION LEAGUE • 717 K STREET, SUITE 209 • SACRAMENTO, CA 95814 • (916) 444-8721

OFFICERS

MICHAEL H. REMY
President
DWIGHT STEELE
Senior Vice President

Vice Presidents

BARBARA EASTMAN
Bay Area
DARLENE MITCHELTREE
Los Angeles
CAROLYN MARTIN
Central Valley
JOHN HOBBS
San Diego

EXECUTIVE DIRECTOR

DAVID F. ABELSON

BOARD OF DIRECTORS

Nick Arguimbau
San Francisco
Peter Behr
Inverness
Rochelle Braly
Los Angeles
Elizabeth Crowder
Portola Valley
Mark Dubois
Sacramento
Ward Elliott
Claremont
Scott Ferguson
Laguna Beach
Gerald Fox
San Diego
Dan Frost
Redding
Doug Graham
Palo Alto
Tom Graff
Berkeley
Dorothy Green
Los Angeles
David Hirsch
Los Angeles
Faye Howe
Malibu
Michael Jacobs
Los Angeles
Robert Kirkwood
Woodside
Bill Korum
Petalsuma
Frid Lang
South Laguna
Elinor Larsen
San Bruno
Lorell Long
Sacramento
Yale Maxon
Berkeley
Gladys Meade
Los Angeles
Conwin Moocine
Inverness
Ralph Perry
Los Angeles
Bob Raab
San Anselmo
Thomas E. Ross
Carmichael
Dale A. Secord
El Monte
Paul Schway
San Francisco
Kenneth Smith
South Lake Tahoe
Mark Vanderveiden
Sacramento
William Wilcoxon
Laguna Beach
Norm Zalman
Beverly Hills

EMERITUS

Lewis Butler
Bill Evers
Alfred Heller
Joseph Houghteling
Mel Lane
Nathaniel Owings
Helen Reynolds
Richard Wilson

CALIFORNIA
ROADSIDE COUNCIL

Al Burton
John Harvey Carter
Yale Maxon

December 26, 1979

Assemblyman William Filante
California Assembly Room #5130
Sacramento, Ca 95814

Dear Bill,

On behalf of the Planning and Conservation League (PCL), I have reviewed the SWRCB's proposed amendments of June 28, 1979 to AB 1147 and have the following comments:

Attachment 1 - OK

Attachment 2 & 3 - OK. PCL agrees that when water is salvaged or "developed" artificially a permit should be obtained. At the very least, this ensures completed record keeping, and it may help the Water Board to better understand viable methods of eliminating the "waste" of water. Of course, such administration may act as a deterrent to water conservation because of the additional "bureaucracy", but it should at least be tried to see what effects it has on water conservation efforts.

Attachment 4 - OK. This seems to "streamline" the bill, and thus should be added.

Attachment 5 - "Surplus Water Sales". This is the most problematic amendment offered for the following reasons. If water districts, as opposed to water users, are allowed to sell water, districts such as MWD may be encouraged to contract for much greater amounts of water than they actually need, intending to sell the surplus. In PCL's judgement, this is an improper use of a public resource. On the other hand, if a Water District actually "conserves" water -- which then becomes surplus -- the district, like an individual user, should have the option of selling that water, provided it would not be more sensible for the district to store the water (e.g. conjunctive use) for a dry year. Unless a district transfer is limited to water actually "conserved" through efficient management, PCL would be inclined to oppose this amendment.

A related question has to do with the financing of the purchase and sale of district water. MWD, for example, relies in part on taxpayers to finance the purchase of its water. If that water is then sold to the central valley at less than the full marginal cost of the water, the urban taxpayer is subsidizing the agricultural users, thereby encouraging "waste". Even if it is sold at the marginal cost, there should be a provision for rebate to the taxpayer or water user who would otherwise be entitled to the water.

In short, the sale by districts themselves raise^s serious questions concerning both efficient use of the resource and equity for the people who are paying for the water. PCL is reluctant to support this amendment without further consideration of these problems.

Attachment 6 - OK

Finally, PCL would urge that Water Code sections 1392 & 1629 not be repealed as urged by ACWA. These sections allow the State to recover water at nominal costs where in the public interest to do so. Water is not a right in fee, but is usufructuary only. A reasonable "notice to quit" is all the government should have to provide, to recover the "property of the people" (Water Code § 102) which a private party has been given the use of through a state permit or license. The July 18, 1979 version of AB 1147 is properly drafted in this regard.

Bill, on behalf of PCL I appreciate your interest in our views on this very important piece of legislation, and we look forward to its successful passage in the near future.

Sincerely,



DAVID F. ABELSON
EXECUTIVE DIRECTOR

ASSEMBLY BILL 1147
(Filante)

as amended in the Senate
July 18, 1979

RE: Water use.

GENERAL:

It is staff's understanding the author will offer amendments in committee. Staff assisted the author in their preparation. The analysis incorporates those amendments.

ANALYSIS:

All sections of AB 1147, except for Section 5, are additive to existing law. Section 5 amends existing law.

Section 1 - Under existing law, water rights do not extend to the waste or unreasonable use of water. This section declares that conformity of use, method of use, or method of diversion of water with local custom shall not be the sole determinants of reasonableness, but one factor thereof.

Section 2 - Cites legislative findings and declarations encouraging the voluntary transfer of water and water rights.

Section 3 - Precludes the loss of appropriative water rights because of efforts to conserve water. Benefits of this section may be contingent upon filing of reports with the State Water Resources Control Board

Section 4 - Relates to treated waste water. An owner of a waste water treatment plant operated for the purpose of treating water from a sanitary sewer system holds an exclusive right to the treated waste water as against specified persons, unless provided by agreement.

-more-

Section 5 - Changes the time period for reversion for vested water rights, not put to beneficial use, from three years to five years. Such reversion shall occur only after findings are made, notice is given, and hearings are held.

Section 6 - Specifies that the sale, lease, exchange, or transfer of water or water rights, in itself, is not evidence of unreasonable application of water. These parameters do not affect determinations of forfeiture under specified acts and conditions.

Section 7 through Section 11 - Establishes a procedure for minor protested applications. A minor application involves direct diversions of three, or less, cubic-feet per second or storage in excess of 200 acre-feet per year.

Section 12 - Deals with Change of Place of Diversion, Place of Use, or Purpose of Use Involving the Transfer of Water.

Article 1 - Relates to temporary changes. A temporary change is defined as being for a period of one year or less.

Article 2 - Relates to changes involving trial transfers. Such transfers are to be for a period not to exceed one year.

Article 3 - Deals with transferring of decreed rights. This portion of the bill allows court decreed water rights to be transferable under specified sections of law. The court may enter a supplemental decree modifying any rights upon motion of the board or party with a vested water right.

Section 13 - Relates to enforcement of water rights.

Article 1 - Cites legislative policy.

-more-

Article 2 - Deals with a procedure for issuance of cease and desist orders. No notice or opportunity for hearing is required for issuance of a final cease and desist order.

Article 3 - Allows judicial review with the court exercising independent judgment on the evidence.

Article 4 - Specifies enforcement powers. The maximum fine for violation may not exceed \$500 per day. Courts may exercise independent judgment on the evidence. All funds recovered will be transferred to the General Fund.

Article 5 - Specifies that any factual or legal determinations made pursuant to a valid, final cease and desist order shall be conclusive and parties are precluded from raising such issues in administrative proceedings.

FISCAL COMMITTEE: YES

#

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN SENATE FEBRUARY 11, 1980

AMENDED IN SENATE JULY 18, 1979

AMENDED IN ASSEMBLY MAY 25, 1979

AMENDED IN ASSEMBLY MAY 7, 1979

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL

No. 1147

Introduced by Assemblyman Filante

March 22, 1979

REFERRED TO COMMITTEE ON WATER, PARKS, AND WILDLIFE

An act to amend Section 1241 of, to add Sections 100.5, 109, ~~1011~~, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, to add Article 1.5 (commencing with Section 1210) to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Filante (W., P., & W.). Water use.

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

This bill would declare state policy that conformity with local custom shall not be solely determinative of 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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits such rights after 3 years of nonuse.

This bill would extend such period to 5 years and would specify that such reversion shall occur upon a finding by the State Water Resources Control Board following notice to a permittee and a public hearing if requested by the permittee. ~~The bill would also provide that no forfeiture of an appropriative right shall occur where the appropriator fails to use the water because of water conservation efforts, and authorizes the board to require any person claiming the benefit of such provision to file periodic reports, as specified.~~

(3) Under existing law, the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested.

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition.

(4) Under existing law, the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a person holding a permit or license to appropriate water is violating a term or condition of the permit or license. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules governing judicial review of any such order, would authorize the board to seek injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters.

(5) Under existing law, there are no provisions expressly governing the ownership of treated waste water.

This bill would provide that 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 the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting 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 instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board ~~must~~ *is required* to find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the

(5) Under existing law, there are no provisions expressly governing the ownership of treated waste water.

This bill would provide that 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 the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting 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 instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board ~~must~~ *is required* to find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the

effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or water rights, in itself, shall not constitute evidence of waste or the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

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

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

1 SECTION 1. Section 100.5 is added to the Water
2 Code, to read:

3 100.5. It is hereby declared to be the established
4 policy of this state that conformity of a use, method of use,
5 or method of diversion of water with local custom shall
6 not be solely determinative of its reasonableness, but shall
7 be considered as one factor to be weighed in the
8 determination of the reasonableness of the use, method
9 of use, or method of diversion of water, within the
10 meaning of Section 2 of Article X of the California
11 Constitution.

12 SEC. 2. Section 109 is added to the Water Code, to
13 read:

14 109. The Legislature hereby finds and declares that
15 the growing water needs of the state require the use of
16 water in a more efficient manner and that the efficient
17 use of water requires greater certainty in the definition
18 of property rights to the use of water and greater
19 transferability of such rights. It is hereby declared to be
20 the established policy of this state to encourage the
21 voluntary transfer of water and water rights where
22 consistent with the public welfare of the place of export
23 and the place of import.

24 ~~SEC. 3. Section 1011 is added to the Water Code, to~~
25 ~~read:~~

26 ~~1011. When any person entitled to the use of water~~
27 ~~under an appropriative right fails to use all or any part of~~

1 the water because of water conservation efforts; any
2 cessation or reduction in the use of such appropriated
3 water shall be deemed equivalent to a reasonable
4 beneficial use of water to the extent of such cessation or
5 reduction in use. No forfeiture of the appropriative right
6 to the water conserved shall occur upon the lapse of the
7 forfeiture period applicable to water appropriated
8 pursuant to the Water Commission Act or this code or the
9 forfeiture period applicable to water appropriated prior
10 to December 19, 1914.

11 The board may require that any user of water who
12 seeks the benefit of this section file periodic reports
13 describing the extent and amount of the reduction in
14 water use due to water conservation efforts. To the
15 maximum extent possible, such reports shall be made a
16 part of other reports required by the board relating to the
17 use of water. Failure to file such reports for two
18 consecutive years shall deprive the user of water of the
19 benefits of this section.

20 For purposes of this section, the term "water
21 conservation" shall mean the use of less water to
22 accomplish the same purpose or purposes of use allowed
23 under the existing appropriative right. Where water
24 appropriated for irrigation purposes is not used by reason
25 of land fallowing or crop rotation, the reduced usage shall
26 be deemed water conservation for purposes of this
27 section.

28 SEC. 4. Article 1.5 (commencing with Section 1210)
29 is added to Chapter 1 of Part 2 of Division 2 of the Water
30 Code, to read:

31

32 Article 1.5. Treated Waste Water

33

34 1210. The owner of a waste water treatment plant
35 operated for the purpose of treating wastes from a
36 sanitary sewer system shall hold the exclusive right to the
37 treated waste water as against anyone who has supplied
38 the water discharged into the waste water collection and
39 treatment system, including a person using water under
40 a water service contract, unless otherwise provided by

1 agreement.

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

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

9 ~~1211. The owner of any wastewater treatment plant
10 may, in the name of the record owner of a permit or
11 license, petition the board for a change in the point of
12 diversion or rediversion, place of use, or purpose of use
13 from that specified in such entitlement, or for a change
14 in point of discharge, where and to the extent water
15 under such entitlement contributes to such discharge,
16 but such change may be made only upon the permission
17 of the board~~

18 *1211. Prior to making any change in the point of
19 discharge, place of use, or purpose of use of treated
20 wastewater, the owner of any wastewater treatment
21 plant shall obtain approval of the board for any such
22 change.* The board shall review such changes pursuant to
23 the provisions of Chapter 10 (commencing with Section
24 1700) of Part 2 of Division 2.

25 1212. The board shall not grant any permit or license
26 to any person other than the treated waste water
27 producer for the appropriation of treated waste water
28 where the producer has introduced such water into the
29 watercourse with the prior stated intention of
30 maintaining or enhancing fishery, wildlife, recreational,
31 or other instream beneficial uses. Holders of existing
32 water rights may not use or claim such water.

33 SEC. 5. Section 1241 of the Water Code is amended to
34 read:

35 1241. When the person entitled to the use of water
36 fails to use beneficially all or any part of the water
37 claimed by him, for which a right of use has vested, for
38 the purpose for which it was appropriated or adjudicated,
39 for a period of five years, such unused water may revert
40 to the public and shall, if reverted, be regarded as

1 record before the board and any evidence of a cease and
2 desist order violation. The court may permit the
3 introduction of additional evidence upon a showing of
4 good cause. The court shall determine good cause by
5 considering whether the evidence could have been
6 produced, with reasonable diligence, at the prior
7 administrative hearing or whether the evidence was
8 improperly excluded. In every case, the court shall
9 exercise its independent judgment on the evidence.

10 (e) All funds recovered pursuant to this section shall
11 be transferred to the General Fund of the state.

12

13

Article 5. Private Litigation

14

15 1850. Any factual or legal determinations made
16 pursuant to a valid, final cease and desist order shall be
17 conclusive and shall preclude any party to the order from
18 raising such issues in any subsequent administrative ~~or~~
19 ~~judicial~~ proceeding.

20 1851. Nothing in this chapter shall be construed to
21 limit or abridge the right of any person to bring an action
22 for equitable or legal relief for harm caused by an
23 unauthorized diversion or a violation of a term or
24 condition of a permit or license. No such person shall be
25 required to exhaust any administrative remedy provided
26 by this chapter before bringing such an action.

O



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

925 L Street

Suite 850

Sacramento, Ca. 95814

Telephone (916) 444 - 2796

March 3, 1980

President
L. N. "JUDGE" LANDIS
P. O. Box 95
San Lorenzo, CA 94580
(415) 542-5173

Secretary-Treasurer
GAIL H. STANTON
P. O. Box 95
San Lorenzo 94580
(415) 276-4700

1st Vice President
WILLIAM R. TEAGUE
Indio

2nd Vice President
LORRENE KASHUBA
South Lake Tahoe

DIRECTORS AT LARGE

ROGER L. DOLAN
Central Contra Costa

JOHN E. FLEMING
Cupertino

ELBERT W. TRANTOW
Goleta

DONALD WINN
Fountain Valley

ACTIVE PAST PRESIDENTS

- JOHN S. HARNETT
- RALPH C. BOLIN
- WALTER E. GARRISON
- JOHN A. LAMBIE
- J. WAYNE SYLVESTER
- CULVER R. LEWIS
- FRANK H. STEVENS
- DON L. ALLAN
- STEPHEN H. GOODMAN
- FRED A. HARPER
- RAYMOND A. BOEGE
- HUGH H. MOORE
- DR. JOSEPH F. BROWN

MICHAEL F. DILLON
Executive Director and
Legislative Advocate
925 L Street, Suite 850
Sacramento 95814

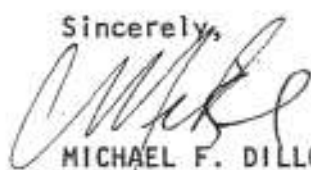
Honorable Albert S. Rodda
Member of the Legislature
State Capitol
Sacramento, CA 95814

Dear Senator Rodda:

The California Association of Sanitation Agencies is in support of SB 1147 by Assemblyman Filante which among other things establishes that the owner of a waste water treatment plant shall hold certain rights to the treated waste water.

Thank you for your consideration.

Sincerely,


MICHAEL F. DILLON

MFD:d

cc: Assemblyman William J. Filante ✓

MAYOR DANIEL A. O'BRIEN
CITY HALL
(209) 944-8244

CITY OF STOCKTON
OFFICE
OF THE CITY COUNCIL
STOCKTON, CA 95202

April 1, 1980

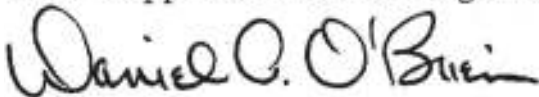
Assemblyman William J. Filante, Member
Water, Parks and Wildlife Committee
State Capitol - Room 5130
Sacramento CA 95814

LEGISLATION - ASSEMBLY BILL NO. 1147 - WATER USE

The City Council on March 31, 1980 authorized me to request your ~~support of AB 1147~~ as amended. The City Council is in favor of the bill as it does provide that the owner of a wastewater treatment plant shall hold exclusive right to treated wastewater as against the water supplier unless otherwise provided by agreement.

The City of Stockton is vitally interested in making the best possible reuse of treated wastewater as it is a most important environmental and socioeconomic concern.

Your support of such legislation is requested.



DANIEL A. O'BRIEN
MAYOR

DAO:cjh

June 18, 1980

Tom Thorner
Roth & Thorner
P.O. Box G
San Rafael, CA 94903

Dear Tom:

I have still been unable to obtain the changes in rights of water districts to freely sell their water as recommended by SWRCB. The consensus here is that it will take at least a year for AB 1147 to be in effect, including the permission for a single district (MMWD) or other districts to come in and ask for that, at which point either permissive or madatory language could be put into another bill.

Whether SB 200 passes or not this year, I agree with the scenario that it will be much easier politically to accomplish next year. The downside at this point is the same as for the other parts that I removed, namely that the entire bill could be lost when we seek concurrence.

Again, many thánks for your help which I intend to continue to seek!

Most sincerely,

WILLIAM J. FILANTE, M.D.

WJF:sp

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN SENATE JUNE 19, 1980
AMENDED IN SENATE FEBRUARY 11, 1980
AMENDED IN SENATE JULY 18, 1979
AMENDED IN ASSEMBLY MAY 25, 1979
AMENDED IN ASSEMBLY MAY 7, 1979

CALIFORNIA LEGISLATURE—1979–80 REGULAR SESSION

ASSEMBLY BILL

No. 1147

Introduced by Assemblyman Filante

March 22, 1979

REFERRED TO COMMITTEE ON WATER, PARKS, AND WILDLIFE

An act to amend Section 1241 of, to add Sections 100.5, 109, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, *to repeal and add Section 71612.5 of*, to add Article 1.5 (commencing with Section 1210) to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Filante (W., P., & W.). Water use.

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

This bill would declare state policy that conformity with local custom shall not be solely determinative of 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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits such rights after 3 years of nonuse.

This bill would extend such period to 5 years and would specify that such reversion shall occur upon a finding by the State Water Resources Control Board following notice to a permittee and a public hearing if requested by the permittee.

(3) Under existing law, the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested.

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition.

(4) Under existing law, the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a person holding a permit or license to appropriate water is violating a term or condition of the permit or license. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules governing judicial review of any such order, would authorize the board to seek injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters.

(5) Under existing law, there are no provisions expressly governing the ownership of treated waste water.

This bill would provide that 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 the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting 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 instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board is required to find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or water rights, in itself, shall not constitute evidence of waste or

the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

(7) Under existing law, municipal water districts are authorized to sell surplus water to any person, public corporation or agency, or other consumer outside the district. Existing law also authorizes the Marin Municipal Water District, whenever a threatened or existing water shortage has been found, to sell or otherwise dispose of up to 1 % of the total district supply of water for purposes of human consumption, sanitation, or fire protection to such consumers outside the district who were, at the time of the finding, then receiving water from the district for such purpose.

This bill would, instead of the foregoing special provision, authorize the Marin Municipal Water District, notwithstanding any other provision of law, to sell water to any person, firm, public or private corporation, or public agency or other consumer within or without the district. The bill would also make legislative findings as to the necessity for a special statute.

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

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

- 1 SECTION 1. Section 100.5 is added to the Water
- 2 Code, to read:
- 3 100.5. It is hereby declared to be the established
- 4 policy of this state that conformity of a use, method of use,
- 5 or method of diversion of water with local custom shall
- 6 not be solely determinative of its reasonableness, but shall
- 7 be considered as one factor to be weighed in the
- 8 determination of the reasonableness of the use, method
- 9 of use, or method of diversion of water, within the
- 10 meaning of Section 2 of Article X of the California
- 11 Constitution.
- 12 SEC. 2. Section 109 is added to the Water Code, to
- 13 read:

1 109. The Legislature hereby finds and declares that
2 the growing water needs of the state require the use of
3 water in a more efficient manner and that the efficient
4 use of water requires greater certainty in the definition
5 of property rights to the use of water and greater
6 transferability of such rights. It is hereby declared to be
7 the established policy of this state to encourage the
8 voluntary transfer of water and water rights where
9 consistent with the public welfare of the place of export
10 and the place of import.

11 SEC. 4. Article 1.5 (commencing with Section 1210)
12 is added to Chapter 1 of Part 2 of Division 2 of the Water
13 Code, to read:

14

15 Article 1.5. Treated Waste Water

16

17 1210. The owner of a waste water treatment plant
18 operated for the purpose of treating wastes from a
19 sanitary sewer system shall hold the exclusive right to the
20 treated waste water as against anyone who has supplied
21 the water discharged into the waste water collection and
22 treatment system, including a person using water under
23 a water service contract, unless otherwise provided by
24 agreement.

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

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

32 1211. Prior to making any change in the point of
33 discharge, place of use, or purpose of use of treated
34 wastewater, the owner of any wastewater treatment
35 plant shall obtain approval of the board for any such
36 change. The board shall review such changes pursuant to
37 the provisions of Chapter 10 (commencing with Section
38 1700) of Part 2 of Division 2.

39 1212. The board shall not grant any permit or license
40 to any person other than the treated waste water

1 producer for the appropriation of treated waste water
2 where the producer has introduced such water into the
3 watercourse with the prior stated intention of
4 maintaining or enhancing fishery, wildlife, recreational,
5 or other instream beneficial uses. Holders of existing
6 water rights may not use or claim such water.

7 SEC. 5. Section 1241 of the Water Code is amended to
8 read:

9 1241. When the person entitled to the use of water
10 fails to use beneficially all or any part of the water
11 claimed by him, for which a right of use has vested, for
12 the purpose for which it was appropriated or adjudicated,
13 for a period of five years, such unused water may revert
14 to the public and shall, if reverted, be regarded as
15 unappropriated public water. Such reversion shall occur
16 upon a finding by the board following notice to the
17 permittee and a public hearing if requested by the
18 permittee.

19 SEC. 6. Section 1244 is added to the Water Code, to
20 read:

21 1244. The sale, lease, exchange, or transfer of water or
22 water rights, in itself, shall not constitute evidence of
23 waste or unreasonable use, unreasonable method of use,
24 or unreasonable method of diversion and shall not affect
25 any determination of forfeiture applicable to water
26 appropriated pursuant to the Water Commission Act or
27 this code or water appropriated prior to December 19,
28 1914.

29 This section does not constitute a change in, but is
30 declaratory of, existing law.

31 SEC. 7. Article 1.5 (commencing with Section 1345)
32 is added to Chapter 5 of Part 2 of Division 2 of the Water
33 Code, to read:

34
35 Article 1.5. Minor Protested Applications Procedure

36
37 1345. The board's Division of Water Rights shall
38 conduct a field investigation and prepare a staff analysis
39 of all minor protested applications. The division shall
40 send the staff analysis by registered mail to the applicant

1 71612.5. Notwithstanding the provisions of Section
2 71612, whenever the Marin Municipal Water District
3 shall have declared a water shortage emergency
4 condition pursuant to Section 350 or made a finding of a
5 threatened or existing water shortage pursuant to Section
6 71642, it may nevertheless sell or otherwise dispose of
7 water for purposes of human consumption, sanitation, or
8 fire protection and, upon such reasonable conditions as it
9 may in its discretion impose, to any persons, public
10 corporations or agencies, or other consumers who were,
11 at the time of such declaration or finding, then receiving
12 water from the district for purposes of human
13 consumption, sanitation, or fire protection but not to
14 exceed 1 percent of the total water supply available to the
15 district. However, no water shall be delivered pursuant to
16 this section to existing users outside the district to the
17 prejudice of existing users within the district.

18 *SEC. 15. Section 71612.5 is added to the Water Code,*
19 *to read:*

20 *71612.5. Notwithstanding any other provision of law,*
21 *the Marin Municipal Water District may sell water to any*
22 *person, firm, public or private corporation, or public*
23 *agency or other consumer within or without the district.*

24 *SEC. 16. The Legislature hereby finds and declares*
25 *that the provisions of Section 15 of this act are necessary*
26 *because of special circumstances within the Marin*
27 *Municipal Water District. The water supplies to this*
28 *district are highly variable and the authority of this act to*
29 *provide domestic and fire protection water to users*
30 *outside the district is necessary to protect the public*
31 *health and prevent fire propagation to property within*
32 *the district. It is, therefore, hereby declared that a*
33 *general law cannot be made applicable within the*
34 *meaning of Section 16 of Article IV of the California*
35 *Constitution and that the enactment of Section 71612.5 of*
36 *the Water Code as a special law as provided by Section*
37 *15 of this act is necessary for the solution of problems*
38 *existing within the Marin Municipal Water District.*



THE PLANNING AND CONSERVATION LEAGUE • 717 K STREET, SUITE 209 • SACRAMENTO, CA 95814 • (916) 444-8726

June 27, 1980

OFFICERS

MICHAEL H. REMY
President
DWAYNE STEELE
Senior Vice President

Vice Presidents
BARBARA EASTMAN
Bay Area
DARLENE MITCHELTREE
Los Angeles
DAN FROST
Central Valley
JOHN HOBBS
San Diego

STAFF

AMY B. HEWES
SHARON M. BEE

BOARD OF DIRECTORS

Nick Arguimbau
San Francisco
Peter Behr
Inverness
Rochelle Braly
Los Angeles
Mark Dubois
Sacramento
Ward Elliott
Claremont
Scott Ferguson
Laguna Beach
Gerald Fox
San Diego
Doug Graham
Palo Alto
Dorothy Green
Los Angeles
David Hirsch
Los Angeles
Bill Korum
Petaluma
Fred Lang
South Laguna
Elinor Larsen
San Bruno
Lorell Long
Sacramento
Yale Maxon
Berkeley
Conain Moline
Inverness
Ralph Perry
Los Angeles
Bob Raab
San Anselmo
Dale A. Secord
El Monte
Paul Sedway
San Francisco
Kenneth Smith
South Lake Tahoe
Mark Vandervelden
Sacramento
William Wilcoxon
Laguna Beach
Norm Zalman
Beverly Hills

EMERITUS

Lewis Butler
Bill Evers
Alfred Heller
Joseph Houghteling
Mel Lane
Nathaniel Owings
Helen Reynolds
Richard Wilson

CALIFORNIA
ROADSIDE COUNCIL

Al Burton
John Harvey Carter
Yale Maxon

Senator Albert Rodda, Chairman
Senate Finance Committee
State Capitol
Sacramento, California 95814

RE: AB 1147 (Filante)
PCL Position: Support

Dear Chairman Rodda:

The Planning and Conservation League (PCL) urges you to support AB 1147 (Filante), which contains many recommendations of the Governor's Water Rights Commission, concerning legal reforms necessary to ensure that water is not wasted, but rather is conserved and used efficiently.

Specifically, AB 1147 would change existing law so that appropriators who conserve water do not lose their rights to that water. This has been a serious impediment to conservaiton in the past.

The bill also provides that past local custom is not determinative of the "reasonable" use of water. Clearly, what was reasonable in the 1920s may not be reasonable in the 1980s.

The bill provides for free market transfers of water, first on a one year trial basis, and then on a long term basis, if the State Water Resources Control Board determines that such transfers will not unreasonably impair the rights of water users or the beneficial needs of fish and wildlife. Such a transfer mechanism is essential to ensure that water is used efficiently in this state. Research by resource economists at the University of California, and others, clearly has shown that such transfers will be cost-effective, both to the seller and to the buyer. This mechanism will guarantee that our existing supply of water is distributed in an economically efficient manner, thus reducing the need for costly new supplies. It will also ensure that those areas which need additional supplies can obtain them at fair market value, which will probably be less than the cost of new supplies.

AB 1147 will create water rights for persons who reclaim waste water, thus encouraging reclamation.

Finally, AB 1147 will strengthen enforcement mechanisms for the State Water Resources Control Board to use in controlling waste and unreasonable use of water.

It should be noted that AB 1147 has already passed the Assembly and the Senate Agriculture and Water Resources Committee on a 9 to 0 vote.

PCI believes that water conservation is the best solution to California's future water needs. AB 1147 will encourage conservation and efficiency. We urge your "Aye" vote when this bill is heard in the Senate Finance Committee.

Sincerely yours,

Amy B. Hewes
Amy B. Hewes
Executive Administrator

cc: Assemblyman William Filante
Members of the Committee

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

SENATE DEMOCRATIC CAUCUSSENATOR OMER L. RAINS, *Chairman*

Bill No. AB 1147 (As Amended: 6-19-80)

Author: Filante (R)

Page 2

Subject: Water Use

CONTINUED--Page 2

Summary of Legislation, Continued:

This bill provides that 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 the water supplier, unless otherwise provided by agreement, and specifies related matters.

The bill also prohibits the Board from granting 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 instream beneficial uses, and prohibits holders of existing water rights from using or claiming such water.

Under existing law, a holder of an appropriate right is required to petition the Board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the Board is required to find that the change will not operate to the injury of any legal user of the water involved.

This bill:

- (1) Authorizes the holder of an appropriate right to temporarily transfer rights to the amount of water consumptively used by such person for a period of one year or less, subject to notification of the Board and objection to the change by the Board, in accordance with prescribed requirements;
- (2) Authorizes the Board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed one year, where it finds that the precise effect of the transfer is difficult to determine in advance;
- (3) Authorizes the Board to modify or revoke such a trial transfer;
- (4) Authorizes the Board to approve, subject to specified requirements, a petition for a long term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user;
- (5) Specifies the remedy of any protestant or other harmed party;
- (6) Permits the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill also specifies that the transfer of water or water rights, in itself, shall not constitute evidence of waste or the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights.

The bill also makes legislative findings and declares legislative policy in connection with the transfer of water and water rights.

Under existing law, municipal water districts are authorized to sell surplus water to any person, public corporation or agency, or other consumer outside the district. Existing law also authorizes the Marin Municipal Water District, whenever a threatened or existing water shortage has been found, to sell or otherwise dispose of up to 1% of the total District supply of water for purposes of human consumption, sanitation, or fire protection to such consumers outside the District who were, at the time of the finding, then receiving water from the District for such purposes.

This bill, instead of the foregoing special provision, authorizes the Marin Municipal

CONTINUED

LLE:ct 7-1-80

SENATE DEMOCRATIC CAUCUS

SENATOR OMER L. RAINS, *Chairman*

Bill No. SB 1147 (As Amended. 6-19-80)

Author: Filante (D)

Page 1

Subject: Water Use

CONTINUED--Page 3

Summary of Legislation, Continued:

Water District, notwithstanding any other provision of law, to sell water to any person, firm, public or private corporation, or public agency, or other consumer within or without the District. The bill also makes legislative findings as to the necessity for a special statute.

Fiscal Effect:

Undetermined

Proponents:

State Water Resources Control Board
Department of Water Resources
The Planning and Conservation League
Association of California Water Agencies
League of California Cities
Friends of the River

Opponents:

Arguments in Support:

Proponents state that due to the growing water needs of the state, more efficient use of water is required; precisely defined water rights are necessary to facilitate the more efficient use of water. Proponents further state that this bill will enact a number of the legislative recommendations of the Governor's Commission to Review California Water Rights Law to more clearly define water rights and to encourage voluntary water transfers.

Arguments in Opposition:

DIGESTBILL NUMBER: AB 1147

1
2 Wastewater for Instream Use. Prohibit prohibition
3 by downstream users of treated wastewater introduced into
4 a stream to enhance fishery, wildlife, recreational or
5 other instream beneficial uses.
6

7 Water Transfers. Declare, in accordance with
8 existing law, that the sale, lease, exchange or transfer
9 of water or water rights is not evidence of unreasonable
10 use and does not provide a basis for forfeiture of a water
11 right.
12

13 Provide an expeditious procedure for approval of
14 temporary exchanges or transfers of water or water rights
15 for periods of less than one year. The proposed transfer
16 would automatically become effective after 30 days unless
17 the SWRCB objects. Such transfers would be exempt from
18 the requirements of the California Environmental Quality
19 Act (CEQA) and would qualify only if they will not injure
20 any legal water user or unreasonably affect instream
21 beneficial water uses.
22

23 Authorize the SWRCB to approve trial transfers of
24 water or water rights where the precise effect of the
25 transfer is difficult to determine in advance after pro-
26 viding notice and an opportunity for hearing if the
27 proposed transfer is "unlikely" to cause substantial
28 injury to other legal water users and would not unreasonably
29 affect instream beneficial uses. Trial ~~transfers would~~
30 be limited to one year. Trial transfers could be converted
31 into long-term water transfers if the SWRCB finds that other
32 legal water users and instream uses will not be harmed.
33 Following the expiration of the temporary, trial or long-term
34 transfer period, all rights shall automatically revert to the
35 original holders of such right without any board action.
36

37 Procedure for Minor Protested Applications. Require
38 the Division of Water Rights of the SWRCB to conduct field
39 investigations and prepare a staff analysis for all pro-
40 tested applications or petitions for change that involve
41 water diversions of less than 3 cubic feet per second or
42 storage of less than 200 acre-feet per year. The bill
43 authorizes the board to act on the basis of the staff
44 analysis unless one of the parties requests a hearing on
45 specific unresolved issues. Existing law requires hearings
46 unless waived by the parties.
47

48 Cease and Desist Orders. Authorize the SWRCB to
49 issue cease and desist orders against water users who
50 violate the conditions of their permit. Under existing
51 law, the board's only recourse against a person violating
52 the conditions of his permit is to revoke the permit. The
53 cease and desist orders would be subject to judicial
54 review. The Attorney General, upon a request by the board,
55 would enforce such orders by seeking injunctive relief
56 and/or a civil penalty of up to \$500 per day.
57

(more)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

Marin Municipal Water District

Authorize Marin Municipal Water District to sell water outside the district to any person, firm, corporation, public agency or other consumer. Under existing law the district is authorized to sell a maximum of one percent of the total water supply to consumers outside the district.

Assembly Noes: Agnos, Berman, Bosco, Dennis Brown, Duffy, Ellis, Felando, Frazee, Hallett, Hayes, Ivers, Johnson, Kelley, Lancaster, Lehman, Leonard, Mountjoy, Nolan, Priolo, Rogers, Statham, Stirling, Tanner, and Maxine Waters.

NEWS

From the Office of Assemblyman **Bill Filante**



FOR IMMEDIATE RELEASE
AUGUST 18, 1980

CONTACT: SUSAN LITTLE
PHONE: (415) 479-4920

FILANTE LANDMARK WATER LEGISLATION PASSES

Assemblyman William J. Filante, M.D. (R-Greenbrae) today announced that his bill, AB 1147, passed concurrence in the State Assembly by a vote of 54-7, and is now on its way to the Governor's desk. The bill would expedite voluntary transfers of water, both on permanent or temporary bases, and might make less necessary some of the giant water projects proposed, like the Peripheral Canal.

Assemblyman Filante is the only member of the Assembly who has successfully carried any legislation coming out of the Governor's Water Rights Commission Report.

"I am very proud of this legislation," said the Assemblyman. "The Planning and Conservation League came to me early last year and asked that I sponsor this important environmentally-oriented piece of legislation. I have worked closely with them and with representatives of the Farm Bureau and the Agriculture Council to see that the bill met with success."

The Assemblyman further noted that "with increased support of this type of landmark legislation, we might not have to consider projects which are economically and ecologically touchy, like the Peripheral Canal, to meet our state's water needs, since this promote more efficient use of water."

#

PLEASE RESPOND TO:

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO, CA 95814
TEL.: (916) 443-7827

DISTRICT OFFICE ADDRESS
30 NORTH SAN PEDRO ROAD #135
SAN RAFAEL, CA 94903
TEL.: (415) 479-6920
ATtn 907-1211

California Legislature



WILLIAM J. FILANTE, M.D.
ASSEMBLYMAN, NINTH DISTRICT
(MARIN AND SONOMA COUNTIES)

COMMITTEES:

RESOURCES, LAND USE AND
ENERGY (VICE-CHAIRMAN)
REVENUE AND TAXATION
WATER, PARKS AND WILDLIFE
SELECT COMMITTEE ON
GENETIC DISEASES
SUBCOMMITTEE ON ENERGY
SUBCOMMITTEE ON TAX
EXPENDITURES

August 21, 1980

Honorable Edmund G. Brown, Jr.
Governor
State of California

RE: AB 1147
Water Use

Dear Governor Brown:

I strongly request your signature on AB 1147. The intent of this bill is to improve the efficiency of water use through the clarification of water rights and improved means of water transfer. This bill enacts several recommendations which were made by Governor's Commission to Review California Water Rights Law to improve the efficiency of water use.

The most important of these provisions facilitates water rights transfers by allowing users to temporarily transfer their rights without forfeiting them. It is expected that this provision will result in greater water use efficiency, both in "surplus" water areas and "deficient" water areas.

This bill will have a minor fiscal impact, with first costs to the Water Resources Control Board estimated to be \$7,600 and the following yearly costs estimated to be \$15,000. (Both estimates are in 1978 dollars and were supplied by the State Water Resources Control Board). In short, this bill will enact many needed reforms which should facilitate the conservation of water with minimal costs.

Again, I strongly urge your signature on this measure.

Sincerely,

A handwritten signature in cursive script that reads "Bill Filante".

WILLIAM J. FILANTE, M.D.

WJF:sp



ENROLLED BILL REPORT

AGENCY ENVIRONMENTAL QUALITY AGENCY	BILL NUMBER AB 1147
DEPARTMENT, BOARD OR COMMISSION STATE WATER RESOURCES CONTROL BOARD	AUTHOR Filante

SUMMARY

This bill would enact some of the legislative recommendations regarding water use efficiency made by the Governor's Commission to Review California Water Rights Law.

ANALYSIS

A. Specific Findings

1. The California Constitution requires that water be reasonably used for beneficial purposes. Under existing law a court, in determining reasonable beneficial use, may give substantial weight to local custom. This legislation would require that the court treat local custom as a factor, but not the exclusive factor, in determining the reasonableness of a beneficial use of water.
2. Under existing law, it is unclear who owns wastewater where there exists a dispute between the owner of the wastewater treatment plant and the original water supplier. This legislation would confer ownership rights on the owner of the treatment plant. Existing law is also unclear as to rights to change place of use, point of diversion, and purpose of use involving treated wastewater. This bill would require the discharging body to obtain SWRCB approval before making changes which could affect downstream uses of the return flow.

Finally, existing law is unclear as to the status of treated wastewater discharged into a stream for the purpose of enhancing instream beneficial uses. This legislation would ensure that treated wastewater discharged into a stream for instream purposes was protected from offstream diversion or use.

3. Under existing law, a holder of an appropriative right may forfeit that right when the holder fails to place the claimed water to continuous beneficial use. A pre-1914 appropriator, i.e., one who appropriated water prior to the passage of the Water Commission Act of 1914, may forfeit the water right after five years of nonuse.

This bill would equalize the pre-1914 and the post-1914 appropriative right forfeiture periods at 5 years. The forfeiture would occur following notice to the permittee, a subsequent finding by the Board and a public hearing if requested by the permittee.

RECOMMENDATION:

SIGN

DEPARTMENT HEAD ② 8/19/80 JMB 9/2/80	DATE	AGENCY HEAD Winston A. Duckor	DATE 8/22/80
--	------	----------------------------------	-----------------

For information call Bonnie Walstoncroft: (Work) 322-0188; (Home) 756-6988

A. Specific Findings (cont'd)

4. This legislation would declare that a transfer of water on water rights, in itself, would not constitute nonuse or an unreasonable use of water. The bill would also provide for an expedited procedure for transfer of water or water rights where the duration of the proposed transfer would not exceed one year. The bill would further authorize trial transfers where the actual impact on downstream beneficial uses would be difficult to determine in advance.

The bill would also allow for possible long-term (greater than one year) transfers, requiring a change in the place of use, point of diversion, or purpose of use, unless the transfer would result in substantial injury to any legal user of water. Water rights quantified pursuant to a statutory adjudication would also be transferrable.

5. Existing law does not require a field investigation and analysis by the SWRCB regarding water rights applications or changes in place of use, point of diversion, or purposes of use. Field investigations and analysis by the Board commonly reduce factual disputes among the parties involved in the administrative action.

This bill would require the Board to conduct field investigations and prepare an analysis for all water right applications or changes involving the diversion of three cubic-feet or less per second, or storage of 200 acre-feet or less per year.

6. Under existing law, the only administrative action available to the SWRCB regarding water users who violate the terms or conditions of their permits or licenses is revocation of their entitlements. Because of the extreme nature of the revocation remedy, it is rarely used.

This legislation would provide the Board with administrative authority to issue cease and desist orders against water users who violate the requirements of their permits or licenses. The Board could enforce violation of such administrative orders by obtaining court-ordered injunctive relief or through court imposition of civil penalties of up to \$500 per day.

A. Specific Findings (cont'd)

7. Existing law authorizes a municipal water district to sell surplus water outside of the district. Additionally, existing law authorized the Marin Municipal Water District, during a threatened or existing water shortage, to sell up to 1% of the total district supply for human consumption, sanitation or fire protection, to those who were receiving water from the district.

This bill would make a special statute applicable to the Marin Municipal Water District and would authorize the District to sell water to any person, firm, public, or private corporation or public agency, or other consumer within or without the district notwithstanding any other provisions of law.

B. Fiscal Impact

First year costs to the SWRCB are estimated to be \$7,600 in 197 dollars. The second and following year costs are estimated to be \$15,200 a year.

LEGISLATIVE HISTORY

1. In 1973, the National Water Commission proposed certain revisions to State water law to encourage water conservation and increased water use efficiency.
2. In 1978, the Governor's Commission to Review California Water Rights Law incorporated a number of the National Water Commission's recommendations into a Final Report.
3. This bill incorporates many of the recommendations of the Water Rights Review Commission regarding water use efficiency.

REASONS FOR RECOMMENDED POSITION

1. The State is facing an increasing water supply deficit. Such a deficit will continue even upon completion of the water supply projects proposed by the Department of Water Resources.
2. Given the presence of such a water supply deficit, water rights law should provide for the greatest number of incentives to encourage water conservation and water use efficiency.

REASONS FOR RECOMMENDED POSITION (cont'd)

3. By removing legal impediments to water conservation and water rights transfers, this legislation will encourage the most efficient use of the resource.

VOTING

Assembly: Ayes, 43; Noes, 24 (6/20/80)
Senate: Ayes, 22; Noes, 1 (7/10/80)
Assembly Concurrence: Ayes, 60; Noes, 9 (8/18/80)

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

JERRY L. BASSETT
KENT L. DeCHAMBEAU
STANLEY M. LOURIMORE
FOWARD K. PURCELL
JL. T. UDEBAKER

JOHN CORZINE
ROBERT GULLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKAY
TRACY O. POWELL, II
RUSSELL L. SPARLING
JIMMIE WING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
CHARLES C. ASBILL
JAMES L. ASHFORD
ROBIN D. BOGDAR
AMELIA I. BUDD
EILEEN J. BURTON
LINDA A. CASATY
HENRY J. CONTRERAS
BEN E. DALE
CLINTON J. DEWITT
C. DAVID DICKERSON
FRANCIS S. DORBIN
LAWRENCE H. FEIN
SHARON R. FISHER
JOHN FOSSETTE
HARVEY J. FOSTER
CLAY FULLER
KATHLEEN E. GNEKOW
ALVIN D. GRESS
JOYCE E. HEE
THOMAS R. HEUER
JACK I. NORTON
SANDRA HUGHES
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
ROMULO I. LOPEZ
JAMES A. MARBALA
PETER F. MELNICOE
JOHN A. MOGGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MARY SHAW
WILLIAM K. STARK
SUSAN L. STEINHAUER
JEFF THOM
MICHAEL H. UPSON
CHRISTOPHER J. WEI
RICHARD B. WEISSBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
August 22, 1980

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA

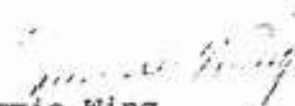
Assembly Bill No. 1147

Dear Governor Brown:

Pursuant to your request we have reviewed the above-numbered bill authored by Assemblyman Filante and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Jimmie Wing
Principal Deputy

JW:AB

Two copies to Honorable William J. Filante,
pursuant to Joint Rule 34.

ENROLLED BILL REPORT

DEPARTMENT OF FOOD AND AGRICULTURE	BILL NUMBER AB 1147
	AUTHOR Filante

SUMMARY

AB 1147 amends the Water Code relating to water efficiency.

BILL ANALYSIS

This legislation was introduced in response to the Final Report (December 1978) of the Governor's Commission to Review California Water Rights Law.

AB 1147 sets forth State policy relating to water efficiency. Specifically, this bill would do the following:

- 1) Establish that the owner of a wastewater treatment plant, operated for the purpose of treating wastes from a sanitary sewer system, has the exclusive right to the use of treated wastewater from his plant which enters a stream system. No other appropriator may claim the use of this water if the owner determines that the "new" water shall be used for in-stream, beneficial uses.
- 2) Amend Section 1241 of the Water Code to extend an appropriator's right to his vested use of his share of water from three to five years. Upon expiration of that period of time, the State Water Resources Control Board (SWRCB) would be required to notify the appropriator prior to forfeiture.
- 3) Add Section 71612.5 to the Water Code which would allow Marin Municipal Water District to sell water within or outside the district. This would promote more efficient use of water.
- 4) Aid the SWRCB in their approval process for minor protested applications and requests for change in use by allowing the Board to act on such applications and requests without a hearing. The hearing process would, however, be available on written request of an applicant or protestant.
- 5) Give the SWRCB authority to issue cease-and-desist orders, and would subject the violator to a maximum fine of \$500 a day.

CONCLUSION

AB 1147 is an attempt to bring flexibility to the existing water-use system while protecting the counties of origin and each appropriator. This bill addresses the need to obtain optimum use of water in California. We recommend the Governor sign AB 1147.

Vote: Ayes 45 Ayes 22
 Assembly Noes 24 Senate Noes 1

RECOMMENDATION:

SIGN VETO DEFER TO

DEPARTMENT DIRECTOR

Thomas G. Rominger for Rominger

DATE

8-25-80

ENROLLED BILL REPORT

AGENCY	RESOURCES	BILL NUMBER AB 1147
DEPARTMENT, BOARD OR COMMISSION	Water Resources	AUTHOR Filante

SUBJECT

This bill would implement certain of the recommendations of the Governor's Commission to Review California Water Rights Law to encourage the more efficient use of water and to provide administrative enforcement procedure for surface water rights.

HISTORY, SPONSORSHIP AND RELATED LEGISLATION

This bill includes recommendations of the Governor's Commission to Review California Water Rights Law dealing with water use efficiency. The bill was supported by the State Water Resources Control Board and by the Association of California Water Agencies.

ANALYSIS

A. Specific Findings:

1. This bill provides that local custom would be considered to be only one factor in determining the reasonable use of water under California Constitution Article 10, Section 2.
2. It would change the forfeiture-for-nonuse period from 3 to 5 years for statutory appropriations (as is currently the case with non-statutory appropriations) and would require an SWRCB finding of forfeiture, with notice and opportunity for hearing.
3. It would require SWRCB staff field investigations and analysis of minor protested applications for water rights and petitions for changes in use.
4. It would give cease-and-desist authority to the SWRCB to enforce water permit or license terms and conditions, with civil penalties of up to \$500 per day of violation.

Passed Senate 7-10-80
Ayes - 22
Noes - 1

Passed Assembly 6-20-80
Ayes - 43
Noes - 24

ANALYZED BY: David B. Anderson

DA 445-9873 (work)
756-3449 (home)

RK Towne
8-25-80

RECOMMENDATION

Sign the Bill.

DEPARTMENT HEAD

[Signature]

DATE

8/27/80

AGENCY HEAD

[Signature]

DATE

8/26/80

(A. Specific Findings continued)

5. The bill would clarify that, in the absence of agreement, the owner of a sewage wastewater treatment plant holds the right to the treated wastewater as against the water supplier.
6. It would also provide an administrative mechanism for the holders of statutory water rights to make temporary transfers of water, and trial transfers when the effect of the transfer is difficult to determine in advance.
7. The bill would allow the Marin Municipal Water District to sell water to any user within or outside the District.

B. Fiscal Analysis:

There would be a small increase in administrative costs to the SWRCB. Economic savings would be realized through the more efficient use of water, less cause for litigation, and decreased cost of unlawful uses of water.

AUTHOR

BILL NUMBER

Filante

AB 1147

SUBJECT:

DATE LAST AMENDED
June 19, 1980

This bill implements several of the recommendations of the Governors Commission to Review California Water Rights law to improve efficiency in water utilization.

SUMMARY OF REASONS FOR SIGNATURE

This bill will more precisely define water rights and encourage voluntary water transfers and conservation.

FISCAL SUMMARY

The following estimates have been prepared by budget staff of the Department of State Water Resources Control Board.

	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>Fund</u>
State Water Resources Control Board Support	\$57,600	\$15,200	\$15,200	General

ANALYSIS

A. Specific Findings

This bill enacts several recommendations of the Governor's Commission to Review California Water Rights Law.

AB 1147:

1. provides incentives for water conservation and defines water rights in various situations;
2. establishes a uniform forfeiture period of five years for non use of water;
3. delineates specified rights and responsibilities with regard to wastewater;
4. allows certain types of voluntary water transfers;
5. establishes a procedure for protested applications for change involving a minor amount of water;
6. authorizes cease and desist orders as an enforcement remedy and
7. authorizes the Marin Municipal Water District to sell water outside the district.

The effect of this bill is to improve efficiency in water utilization by encouraging a better allocation of resources.

(Continued)

RECOMMENDATION

PRINCIPAL ANALYST

PROGRAM BUDGET MANAGER

SIGN THE BILL.

RIS

C. Smith 8-25-80

J. Harris 8/26/80

DEPARTMENT REPRESENTATIVE

DATE

DIRECTOR

DATE

CP [Signature]

AUG 27 1980

[Signature]

AUG 29 1980

AB 1147

Filante

June 19, 1980

ANALYSIS (Continued)

B. Fiscal Effect

SWRCB indicates the annual costs of this bill would be \$15,200 and can be absorbed within existing resources.

G

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 3, 1980
BILL NO. AB 1147	AUTHOR Filante

Vote—Senate _____ Unanimous

Ayes— 22

Noes— 1 - Garamendi

Vote—Assembly _____ Unanimous

Ayes— 43

Noes— 24 - Agnos, Berman, Bosco, D. Brown, Duffy, Ellis, Felando, Frazee, Hallett, Hayes, Ivers, Johnson, Kelley, Lancaster, Lehman, Leonard, Mountjoy, Nolan, Priolo, Rogers, Statham, Stirling, Tanner, M. Waters

Concurrence 60-9

AB 1147 - Filante This bill would implement certain of the recommendations of the Governor's Commission to Review California Water Rights Law to encourage the more efficient use of water and to provide administrative enforcement procedure for surface water rights.

Specifically the bill:

1. Changes the forfeiture for nonuse period from 3 to 5 years for statutory appropriations and would require an SWRCB finding of forfeiture.
2. Gives the State Water Resources Control Board cease and desist authority to enforce water permit or license terms and conditions, with civil penalties of up to \$500 per day of violation.
3. Provides that local custom would be considered to be only one factor in determining the reasonable use of water.
4. Provides an administrative mechanism for the holders of statutory water rights to make temporary transfers of water.
5. Make other related changes.

SUPPORT

Department of Water Resources
Department of Food and Agriculture

Recommendation JDN APPROVE	Legislative Secretary
------------------------------------	-----------------------

SUPPORT (continued)

Department of Finance
State Water Resources Control Board

OPPOSITION

No expressed opposition

FISCAL IMPACT

\$15,200 annual General Fund cost

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

Sacramento, California
September 11, 1980

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1695

VUICH. Amends Sec. 1241, Wat. C., re
water rights.

To take effect immediately, urgency statute.

SUMMARY:

See Legislative Counsel's Digest on the
attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

This bill, an urgency statute, would amend
Section 1241 of the Water Code.

Assembly Bill No. 1147, which is also
before the Governor, would, among other things,
also amend Section 1241 of the Water Code. Section
1241 would be amended by both bills to read
identically.

Report on S.B. 1685 - p. 2

Thus, if both bills are chaptered,
the order of chaptering would be immaterial.

Bion H. Gregory
Legislative Counsel

By
Thomas D. Whelan
Deputy Legislative Counsel

TDW:kh

Two copies to Honorable Rose Ann Vuich and,
Honorable William J. Filante,
pursuant to Joint Rule 34.

NEWS

From the Office of Assemblyman
Bill Filante



FOR IMMEDIATE RELEASE
September 19, 1980

CONTACT: SUSAN LITTLE
PHONE: (415) 479-4920

TWO FILANTE BILLS SIGNED BY GOVERNOR BROWN

Assemblyman William J. Filante, M.D. (R-Greenbrae) announced today that Governor Brown signed two of his bills yesterday, AB 1147 and AB 2371.

~~AB 1147~~ amends several sections of the Water Code, dealing with water rights; clarifies the ownership of waste water and waste water facilities; and allows for the transfer of water rights. Filante said that this bill and others like it "could greatly diminish the need for huge projects like the Peripheral Canal. The bill is a step in the direction of making more efficient use of what we already have, rather than ignoring the possibilities offered to us through better planning and use practices."

The Assemblyman further noted that he was "especially proud to have successfully carried this bill as a Freshman since I was the only member of the Assembly to successfully have enacted any portion of the State Water Rights Commission's recommendations."

AB 2371 provides a more convenient procedure for people with previous criminal records to examine and check on the accuracy of these records. It also contains provisions to guard against unfair publicity for the records and contains provisions that there will be no public cost for this procedure. The bill was sponsored by the Department of Justice and passed both houses of the Legislature unanimously.

###

Room 5130, State Capitol
Sacramento, California 95814
(916) 445-7827

Petaluma City Hall
Post & English Streets - 94952
Southern Sonoma County
(707) 762-5706

30 N. San Pedro Road, Suite 135
San Rafael, California 94903
(415) 479-4520

Assembly Bill No. 1147

CHAPTER 933

An act to amend Section 1241 of, to add Sections 100.5, 109, 1244, 1704.1, 1704.2, 1704.3, and 1704.4 to, to repeal and add Section 71612.5 of, to add Article 1.5 (commencing with Section 1210) to Chapter 1 of, to add Article 1.5 (commencing with Section 1345) to Chapter 5 of, and to add Chapter 10.5 (commencing with Section 1725) and Chapter 12 (commencing with Section 1825) to, Part 2 of Division 2 of, the Water Code, relating to water.

[Approved by Governor September 18, 1980. Filed with Secretary of State September 19, 1980.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, Filante. Water use.

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

This bill would declare state policy that conformity with local custom shall not be solely determinative of 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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits such rights after 3 years of nonuse.

This bill would extend such period to 5 years and would specify that such reversion shall occur upon a finding by the State Water Resources Control Board following notice to a permittee and a public hearing if requested by the permittee.

(3) Under existing law, the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested.

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition.

(4) Under existing law, the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a person holding a permit or license to appropriate water is

violating a term or condition of the permit or license. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules governing judicial review of any such order, would authorize the board to see injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters.

(5) Under existing law, there are no provisions expressly governing the ownership of treated waste water.

This bill would provide that 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 the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting 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 instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water.

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water right transfer involving a change of place of use, point of diversion, or purpose of use, and the board is required to find that the change will not operate to the injury of any legal user of the water involved.

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a temporary transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a temporary transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a temporary transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or water rights, in itself, shall not constitute evidence of waste or the unreasonable use of water and shall not affect any determination of

forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

(7) Under existing law, municipal water districts are authorized to sell surplus water to any person, public corporation or agency, or other consumer outside the district. Existing law also authorizes the Marin Municipal Water District, whenever a threatened or existing water shortage has been found, to sell or otherwise dispose of up to 1% of the total district supply of water for purposes of human consumption, sanitation, or fire protection to such consumers outside the district who were, at the time of the finding, then receiving water from the district for such purpose.

This bill would, instead of the foregoing special provision, authorize the Marin Municipal Water District, notwithstanding any other provision of law, to sell water to any person, firm, public or private corporation, or public agency or other consumer within or without the district. The bill would also make legislative findings as to the necessity for a special statute.

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

SECTION 1. Section 100.5 is added to the Water Code, to read:

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.

SEC. 2. Section 109 is added to the Water Code, to read:

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

SEC. 4. Article 1.5 (commencing with Section 1210) is added to Chapter 1 of Part 2 of Division 2 of the Water Code, to read:

Article 1.5. Treated Waste Water

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).

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

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.

SEC. 5. Section 1241 of the Water Code is amended to read:

1241. When the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, such unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. Such reversion shall occur upon a finding by the board following notice to the permittee and a public hearing if requested by the permittee.

SEC. 6. Section 1244 is added to the Water Code, to read:

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.

SEC. 7. Article 1.5 (commencing with Section 1345) is added to Chapter 5 of Part 2 of Division 2 of the Water Code, to read:

Article 1.5. Minor Protested Applications Procedure

1345. The board's Division of Water Rights shall conduct a field investigation and prepare a staff analysis of all minor protested applications. The division shall send the staff analysis by registered mail to the applicant and to any protestant.

Municipal Water District may sell water to any person, firm, public or private corporation, or public agency or other consumer within or without the district.

SEC. 16. The Legislature hereby finds and declares that the provisions of Section 15 of this act are necessary because of special circumstances within the Marin Municipal Water District. The water supplies to this district are highly variable and the authority of this act to provide domestic and fire protection water to users outside the district is necessary to protect the public health and prevent fire propagation to property within the district. It is, therefore, hereby declared that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution and that the enactment of Section 71612.5 of the Water Code as a special law as provided by Section 15 of this act is necessary for the solution of problems existing within the Marin Municipal Water District.

O

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

CALIFORNIA LEGISLATURE
1979-80 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1980

and

1979-1980 Statutory Record



DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

date is repealed, unless a later enacted statute, which is chaptered before such date, deletes or extends such date.

Ch 933 (AB 1147) Filante Water use

(1) Under existing law, no water right may extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water

This bill would declare state policy that conformity with local custom shall not be solely determinative of 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.

(2) Under existing law, a person who has acquired an appropriative water right pursuant to the Water Code forfeits such rights after 3 years of nonuse

This bill would extend such period to 5 years and would specify that such reversion shall occur upon a finding by the State Water Resources Control Board following notice to a permittee and a public hearing if requested by the permittee

(3) Under existing law, the board is not required to conduct a field investigation of all applications for a permit to appropriate water and petitions for change in place of use, point of diversion, and purpose of use, but the board is required to hold a hearing if any such application or petition is protested

This bill would require the board to conduct a field investigation and prepare a staff analysis of all minor protested applications or petitions, as defined, and would specify procedures for the conduct of any hearing on such an application or petition

(4) Under existing law, the board may revoke a permit or license to appropriate water upon violation of any term or condition of the permit. The board may also seek injunctive relief to halt unauthorized diversions and may take any appropriate proceedings or actions to prevent the waste or unreasonable use of water.

This bill would authorize the board to issue cease and desist orders where a person holding a permit or license to appropriate water is violating a term or condition of the permit or license. The bill would declare legislative intent in such connection, would specify the procedures for issuance of such orders, would specify rules governing judicial review of any such order, would authorize the board to seek injunctive relief to enforce such orders, would authorize the board to petition the superior court for imposition of a civil penalty in a sum not to exceed \$500 for each day in which violation occurs, and would specify related matters

(5) Under existing law, there are no provisions expressly governing the ownership of treated waste water

This bill would provide that 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 the water supplier, unless otherwise provided by agreement, and would specify related matters. The bill would also prohibit the board from granting 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 instream beneficial uses and would prohibit holders of existing water rights from using or claiming such water

(6) Under existing law, a holder of an appropriative right is required to petition the board for the approval of any water rights transfer involving a change of place of use, point of diversion, or purpose of use, and the board is required to find that the change will not operate to the injury of any legal user of the water involved

This bill would authorize the holder of an appropriative right to temporarily transfer rights to the amount of water consumptively used by such person for a period of 1 year or less, subject to notification of the board and objection to the change by the board in accordance with prescribed requirements. The bill would authorize the board, in accordance with prescribed procedures and subject to specified requirements, to approve a petition for a trial transfer of water rights not to exceed 1 year, where it finds that the precise effect of the transfer is difficult to determine in advance. The bill would authorize the board to modify or revoke such a trial transfer, would authorize the board to approve, subject to specified requirements, a petition for a long-term transfer of water rights where it has previously approved a trial transfer where the change would not result in any substantial injury to any other water user, and would specify the remedy

of any protestant or other harmed party. The bill would permit the transfer of any water right, including riparian rights, which has been quantified after the effective date of the bill pursuant to a statutory adjudication.

The bill would also specify that the transfer of water or water rights, in itself, shall not constitute evidence of waste or the unreasonable use of water and shall not affect any determination of forfeiture applicable to appropriative rights. The bill would also make legislative findings and declare legislative policy in connection with the transfer of water and water rights.

(7) Under existing law, municipal water districts are authorized to sell surplus water to any person, public corporation or agency, or other consumer outside the district. Existing law also authorizes the Marin Municipal Water District, whenever a threatened or existing water shortage has been found, to sell or otherwise dispose of up to 1% of the total district supply of water for purposes of human consumption, sanitation, or fire protection to such consumers outside the district who were, at the time of the finding, then receiving water from the district for such purpose.

This bill would, instead of the foregoing special provision, authorize the Marin Municipal Water District, notwithstanding any other provision of law, to sell water to any person, firm, public or private corporation, or public agency or other consumer within or without the district. The bill would also make legislative findings as to the necessity for a special statute.

Ch. 934 (AB 1799) Greene. Parking facilities- Bicycles and mopeds.

Existing law makes no provision for the construction, operation, and maintenance of bicycle and moped parking facilities in state parking facilities or in the areas adjacent to state agencies.

This bill would provide for such parking facilities

Ch. 935 (AB 2367) Nolan. Loans- personal property brokers

Existing law provides that loans for which a greater rate of interest than that permitted by the Personal Property Brokers Law has been charged are unenforceable in this state.

This bill would repeal that provision.

This bill would provide that no personal property broker has any liability under specified provisions of law if, the licensee shows by preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and within 15 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes, as specified, and by taking other action necessary to correct the error.

Existing law provides that any person who violates the Personal Property Brokers Law or any provision of the rules, orders and regulations of the Commissioner of Corporations is guilty of a misdemeanor

This bill would add the requirement that such violation be willful

Ch. 936 (AB 2326) Ryan. Voter list. purging costs

Existing law requires county clerks to cancel voters' affidavits of registrations in accordance with specified procedures.

This bill would require the Secretary of State to reimburse counties for the costs incurred by them in undertaking such action. The reimbursements would be made in accordance with a specified formula and from funds appropriated by the Legislature

The bill would also provide that no reimbursement for costs incurred by counties for conducting the 1978, 1980, 1982, or 1984 purge of voter registration files would be made unless claims are submitted on or before October 31, 1980, March 31, 1981, March 31, 1983, or March 31, 1985, respectively.

The bill would be operative until December 31, 1985, and as of such date would be repealed unless a later enacted statute deletes or extends such date

The bill would take effect immediately as an urgency statute

Ch. 937 (AB 15) W Brown. Personal Income Tax Law- [Property taxation]*

Existing law provides that all property is subject to taxation unless specifically exempt-

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Volume 12

Index to Journal of the Assembly

Legislature of the State of California

1979–80 Regular Session

December 4, 1978 to August 31, 1980

HON. LEO T. McCARTHY
Speaker of the Assembly

HON. WILLIE L. BROWN JR.
Majority Floor Leader

HON. JOHN T. KNOX
Speaker pro Tempore

HON. CAROL HALLETT
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk of the Assembly

AB No

- 1138 Introduced, held at desk, 1644, to committee, 1681, from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art IV, Sec 10(a) of Constitution, 11068
- 1139 Introduced, held at desk, 1644, to committee, 1681, from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art IV, Sec 10(a) of Constitution, 11064
- 1140 Introduced, held at desk, 1644, to committee, 1681, from committee, 3942, amended, 4056, 4158, engrossed, re-referred, 4213, from committee, 6531, read second time, 6600, passed, to Senate 6738, from Senate without action, November 30, 1980
- 1141 Introduced, held at desk, 1644, to committee, 1683, from committee, amended (author's), 2884, 3083, engrossed, re-referred, 3124, from committee, 4238, amended, 4357, 4438, engrossed, referred, 4726, from committee, amended (author's), 5599, 5612, engrossed, re-referred, 5635, from committee, 6745, read second time, 6808, passed, to Senate 6928, from Senate, with amendments, 12567, amendments concurred in, 13085, enrolled, to Governor, 18436, Chapter 607 (1980)
- 1142 Introduced, held at desk, 1644, to committee, 1683, from committee, 3419, amended, 3614, 3848, engrossed, re-referred, 3861, from committee, 6388, read second time, 6478, passed, to Senate, 6732, from Senate, with amendments, 8740, amendments concurred in, 9093, enrolled, to Governor, 9192, Chapter 700 (1979), without signature
- 1143 Introduced, held at desk, 1644, to committee, 1683, from committee, 10479, amended, 10540, 10549, engrossed, re-referred, 10583, from committee, 10817, pursuant to previous Rules suspension, 10794, read second time, amended, 10819, 10830, engrossed, 10844, passed, to Senate, 10938, from Senate, with amendments, 19371, amendments concurred in, 19728, enrolled, to Governor, 19811, Chapter 1198 (1980) veto item, 19824
- 1144 Introduced, held at desk, 1644, to committee, 1683, from committee, amended (author's), 5646, 5664, engrossed, re-referred, 5750, from committee, to Chief Clerk, pursuant to Joint Rule 56, died pursuant to Art IV, Sec 10(a) of Constitution, 11062
- 1145 Introduced, held at desk, 1644, to committee, 1683, from committee, 4235, amended, 4351, 4442, engrossed, re-referred, 4726, from committee, amended (author's), 7775, 7784, engrossed, re-referred, 7801, from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art IV, Sec 10(a) of Constitution, 11067
- 1146 Introduced, held at desk, 1644, to committee, 1683, from committee, re-referred, 4049, from committee, 6388, read second time, engrossed, 6484, passed, to Senate, 6650, from Senate, 9282, enrolled, to Governor, 9421, Chapter 772 (1979)
- 1147 Introduced, held at desk, 1644, to committee, 1683, from committee, 3979, amended, 4068, 4159, engrossed, re-referred, 4213, from committee, 5445, amended (author's), 5446, 5546, engrossed, referred, 5591, from committee, 6745, read second time, 6806, passed, to Senate, 6921, from Senate, with amendments, 18347, amendments concurred in, 18472, enrolled, to Governor, 18652, Chapter 933 (1980)
- 1148 Introduced, held at desk, 1645, to committee, 1681, from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art IV, Sec 10(a) of Constitution, 11063
- 1149 Introduced, held at desk, 1645, to committee, 1683, from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art IV, Sec 10(a) of Constitution, 11066
- 1150 Introduced, held at desk, 1645, to committee, 1683, from committee, 4235, amended, 4351, 4443, engrossed, re-referred, 4726, withdrawn and re-referred, 4900, Joint Rule 61 suspended, 5499, from committee, 6662, amended, 6710, 6786, engrossed, re-referred, 6800, from committee, 7680, read second time, 7680, read third time, passed to Senate, 7813, action rescinded, 7814, passed on file, 7814, Joint Rule 61 suspended, 7879, read third time, passed, motion to reconsider, 7944, motion to reconsider, waived, 7949, from Senate, with amendments, 17985, amendments concurred in, 18060, enrolled, to Governor, 18429, Chapter, 693 (1980)

Volume 8

Journal of the Senate

Legislature of the State of California

1979–1980 Regular Session



HON. MIKE CURB
President of the Senate

HON. JAMES R. MILLS
President pro Tempore

DARRYL R. WHITE
Secretary of the Senate

433—214

- AB No.
- 1132 From Assembly, read first time, 3874; to committee, 3920; from committee, 4319; committee roll call, 4378; read second time, amended, re-referred to committee, 4391 (4574); from committee, 5187; read second time, 5257; read third time, passed, to Assembly, 5687; Senate amendments concurred in, 6030
- 1134 From Assembly, read first time, 5072; to committee, 5288; author's amendments, 5878 (5913); committee roll call, 6118; from committee, re-referred to committee, 6144; author's amendments, 6340 (6465), 6815 (6852); committee roll call, 6869, 7256; from committee, 7274; read second time, amended, 7334 (7366); read third time, passed, to Assembly, 7586, 7589; Senate amendments concurred in, 7710
- 1140 From Assembly, read first time, 4706; to committee, 4800; author's amendments, 5255 (5273); from committee, re-referred to committee, 5940; committee roll call, 5980; from committee, 6189; read second time, 6377; read third time, amended, 6584 (6648), 7168 (7225); ordered to inactive file, 7591; died on file, 14916
- 1141 From Assembly, read first time, 4785; to committee, 5097; author's amendments, 5561 (5654), 8378 (8382); from committee, re-referred to committee, 8527; committee roll call, 8531; from committee, 9269; committee roll call, 9287; read second time, 9299; read third time, passed, to Assembly, 9423; Senate amendments concurred in, 9789
- 1142 From Assembly, read first time, 4706; to committee, 4800; author's amendments, 5142 (5176); from committee, re-referred to committee, 5541; committee roll call, 5665; from committee, 6186; read second time, 6367; read third time, passed, to Assembly, 6681; Senate amendments concurred in, 7045
- 1143 From Assembly, read first time, 8368; to committee, 8445; committee roll call, 8970, 9288; author's amendments, 9310 (9365), 12670 (12675), 13753 (13803); committee roll call, 13839; from committee, re-referred to committee, 13842; committee roll call, 14319; from committee, 14324; read second time, amended, 14371 (14384); read third time, passed, to Assembly, 14571, 14585; Senate amendments concurred in, 14811
- 1146 From Assembly read first time, 4596; to committee, 4800; from committee, re-referred to committee, 5935; committee roll call, 5971; from committee, 6686; committee roll call, 6712; read second time, 6731; read third time, passed, to Assembly, 7182
- 1147 From Assembly, read first time, 4785; to committee, 5097; author's amendments, 5940 (5962); committee roll call, 8441; from committee, 8460; read second time, amended, re-referred to committee, 8495 (8505); author's amendments, 12347 (12359); from committee, 12847; read second time, 12972; read third time, passed, to Assembly, 13395; Senate amendments concurred in, 13771
- 1150 From Assembly, read first time, 5766; to committee, 5935; committee roll call, 8786; from committee, 8950; read second time, amended, re-referred to committee, 8985 (8997); committee roll call, 13028; from committee, 13083; read second time, amended, 13142 (13153); read third time, passed, to Assembly, 13297; Senate amendments concurred in, 13392
- 1151 From Assembly, read first time, 4842; to committee, 5097; committee roll call, 5979; from committee, 6156; read second time, amended, re-referred to committee, 6360 (6466); author's amendments, 6743 (6771); from committee, 6967; read second time, 7001; read third time, amended, 7406 (7437), 7465 (7499); motion to re-refer to committee, 7465; read third time, amended, 7469 (7500); read third time, passed, 7525; motion to reconsider, read third time, passed, to Assembly, 7527, 7535; Senate amendments not concurred in, Assembly appoints Conference Committee, 7599; Senate appoints Conference Committee, 7600; Senate adopts Conference report, 7749, 7758; Assembly adopts Conference report, 7823
- 1153 From Assembly, read first time, 4785; to committee, 5097; from committee, re-referred to committee, 5944; committee roll call, 5976; author's amendments, 6073 (6115); from committee, 6186; read second time, amended, 6369 (6467); read third time, passed, to Assembly, 7449, 7457
- 1154 From Assembly, read first time, 4861; to committee, 5097; from committee, re-referred to committee, 5946; committee roll call, 5963; from committee, 6511; read second time, 6564; read third time, passed, to Assembly, 6957
- 1161 From Assembly, read first time, 3278; to committee, 3444; author's amendments, 3591 (3639); committee roll call, 5340; from committee, 5511; read second time, amended, 5543 (5656); read third time, passed, to Assembly, 6017; Senate amendments concurred in, 6126

NOTE: Page numbers in parentheses refer to Journal page of amendments.

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 946
AUTHOR : Kelley
TOPIC : Water rights.

TYPE OF BILL :

Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2001

Sept. 20 Chaptered by Secretary of State - Chapter 315, Statutes of 2001.
Sept. 19 Approved by the Governor.
Sept. 12 Enrolled and to the Governor at 4 p.m.
Aug. 31 Senate amendments concurred in. To enrollment. (Ayes 71. Noes 2. Page 3347.)
Aug. 30 In Assembly. Concurrence in Senate amendments pending. May be considered on or after September 1 pursuant to Assembly Rule 77.
Aug. 30 Read third time, passed, and to Assembly. (Ayes 25. Noes 12.)
Aug. 22 Read second time. To third reading.
Aug. 21 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
Aug. 20 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR.
July 18 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 4. Noes 2.).
July 9 Joint Rule 61 (a)(9) suspended (Page 1890.)
July 5 From committee: Do pass, and re-refer to Com. on JUD. Re-referred. (Ayes 7. Noes 0.).
July 2 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on AGR. & WAT. RES. Joint Rule 62(a), file notice waived. (Page 1783.)
June 19 Withdrawn from committee. Re-referred to Coms. on AGR. & WAT. RES. and JUD.
June 13 Withdrawn from committee. Re-referred to Com. on RLS.
May 24 In Senate. Read first time. To Com. on RLS. for assignment.
May 24 Read third time, passed, and to Senate. (Ayes 47. Noes 11. Page 1789.)
May 21 Read second time. To third reading.
May 17 From committee: Do pass. (Ayes 14. Noes 1.) (May 16).
Apr. 30 Re-referred to Com. on APPR.
Apr. 25 Read second time and amended.
Apr. 24 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 17).
Apr. 17 Re-referred to Com. on JUD.
Apr. 16 Read second time and amended. Joint Rule 62(a), file notice waived. (Page 1019.)
Apr. 5 From committee: Amend, do pass as amended, and re-refer to Com. on JUD. (Ayes 11. Noes 2.) (April 3).
Mar. 12 Referred to Coms. on W.,P. & W. and JUD.
Feb. 26 Read first time.

Feb. 25 From printer. May be heard in committee March 27.
Feb. 23 Introduced. To print.

ASSEMBLY BILL

No. 946

Introduced by Assembly Member Kelley

February 23, 2001

An act to amend Sections 1055, 1055.2, 1126, 1211, 1704, 1825, 1831, 1832, 1834, 1845, and 1850 of, to add Sections 1701.1, 1701.2, 1701.3, 1701.4, 1703.1, 1703.2, 1703.3, 1703.4, 1703.5, and 1703.6 to, and to repeal Section 1833 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as introduced, Kelley. Water rights.

(1) Existing law authorizes any person aggrieved by any decision or order of the State Water Resources Control Board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate. The bill would delete the provision relating to the exercise of independent judgment by a court.

(2) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement 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.

(3) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the petition and would impose requirements in connection with the filing of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

(4) Existing law authorizes the board to issue a preliminary cease and desist order to any person holding a permit or license to appropriate water if the board determines that that person is violating a term or condition of that permit or license and provides for the issue of a final cease and desist order. Existing law requires the Attorney General, if so requested by the board and upon the failure of any person to comply with a final cease and desist order, to petition the superior court for the issuance of specified relief.

This bill would delete references to a preliminary or final cease and desist order and, instead, would authorize the board to issue a cease and desist order to any person who the board determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the board, or prescribed orders or decisions of the board.

The bill would specify that civil liability may be imposed by the superior court, and would authorize the board to impose that liability administratively, on any person who violates a cease and desist order.

(5) Existing law makes a statement of legislative intent regarding the need for the state to take action to enforce the terms and conditions of permits and licenses to appropriate water.

This bill, in addition, would declare that it is the intent of the Legislature that the state take action to enforce certifications and registrations to appropriate water and to enforce the orders and decisions of the board.

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

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

1 SECTION 1. Section 1055 of the Water Code is amended to
2 read:

3 1055. (a) The executive director of the board may issue a
4 complaint to any person on ~~whom~~ *which* administrative civil
5 liability may be imposed pursuant to Section 1052, *Section 1845*,
6 or Section 5107. The complaint shall allege the act or failure to act
7 that constitutes a trespass or violation, the provision of law
8 authorizing civil liability to be imposed, and the proposed civil
9 liability.

10 (b) The complaint shall be served by personal notice or
11 certified mail, and shall inform the party so served that the party
12 may request a hearing within 20 days after the party has been
13 served. The hearing shall be before a member of the board as it may
14 specify.

15 (c) After any hearing, the member shall report a proposed
16 decision and order to the board and shall supply a copy to the party
17 served with the complaint, the board's executive director, and any
18 other person requesting a copy. The member of the board acting
19 as hearing officer may sit as a member of the board in deciding the
20 matter. The board, after making an independent review of the
21 record and taking any additional evidence as may be necessary and
22 could not reasonably have been offered before the hearing officer,
23 may adopt, with or without revision, the proposed decision and
24 order.

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

4 SEC. 2. Section 1055.2 of the Water Code is amended to read:

5 1055.2. No person shall be subject to both civil liability
6 imposed under Section 1055 and civil liability imposed by the
7 superior court under subdivision (d) of Section 1052 *or Section*
8 *1845* for the same act or failure to act.

9 SEC. 3. Section 1126 of the Water Code is amended to read:

10 1126. (a) It is the intent of the Legislature that all issues
11 relating to state water law decided by the board be reviewed in state
12 courts, if a party seeks judicial review. It is further the intent of the
13 Legislature that the courts assert jurisdiction and exercise
14 discretion to fashion appropriate remedies pursuant to Section 389
15 of the Code of Civil Procedure to facilitate the resolution of state
16 water rights issues in state courts.

17 (b) Any party aggrieved by any decision or order may, not later
18 than 30 days from the date of final action by the board, file a
19 petition for a writ of mandate for review of the decision or order.
20 ~~Unless reconsideration makes available a higher level of review of~~
21 ~~a~~ *Except in cases where the decision or order is issued under*
22 *authority delegated to an officer or employee of the board, the right*
23 ~~to petition shall not be affected by the failure to seek~~
24 ~~reconsideration before the board is not an administrative remedy~~
25 ~~that is required to be exhausted before filing a petition for writ of~~
26 ~~mandate.~~ *The time for filing the petition for writ of mandate shall*
27 *be extended for any person who seeks reconsideration by the board*
28 *pursuant to this article.*

29 (c) Except as otherwise provided in this section, Section 1094.5
30 of the Code of Civil Procedure shall govern the judicial
31 proceedings. ~~For the purposes of subdivision (c) of Section 1094.5~~
32 ~~of the Code of Civil Procedure, the court shall exercise its~~
33 ~~independent judgment on the evidence in any case involving the~~
34 ~~judicial review of a cease and desist order issued pursuant to~~
35 ~~Article 2 (commencing with Section 1831) of Chapter 12 of Part~~
36 ~~2 of Division 2, and in any other case in which the court is~~
37 ~~authorized by law to exercise its independent judgment on the~~
38 ~~evidence.~~

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

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

13 SEC. 4. Section 1211 of the Water Code is amended to read:

14 1211. (a) Prior to making any change in the point of
15 discharge, place of use, or purpose of use of treated ~~waste-water~~
16 *wastewater*, the owner of any ~~waste-water~~ *wastewater* treatment
17 plant shall obtain approval of the board for ~~any such~~ *that* change.
18 The board shall review such changes pursuant to the provisions of
19 Chapter 10 (commencing with Section 1700) of Part 2 of Division
20 2.

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

24 SEC. 5. Section 1701.1 is added to the Water Code, to read:

25 1701.1. A petition for change filed after notice of an
26 application shall meet all of the following requirements:

27 (a) State the name and address of the petitioner.

28 (b) Be signed by the petitioner, or the petitioner's agent or
29 attorney.

30 (c) Set forth amendments to the application or an amended
31 application reflecting the proposed change, including any
32 information necessary for the amended application to comply with
33 Section 1260.

34 (d) Include sufficient information to demonstrate a reasonable
35 likelihood that the proposed change will not injure any other legal
36 user of water.

37 (e) Contain other appropriate information and be in the form
38 required by applicable regulations.

39 SEC. 6. Section 1701.2 is added to the Water Code, to read:

1 1701.2. A petition for change in a permit or license shall meet
2 all of the following requirements:

3 (a) State the name and address of the petitioner.

4 (b) Be signed by the petitioner, or the petitioner's agent or
5 attorney.

6 (c) Include all information reasonably available to the
7 petitioner, or that can be obtained from the Department of Fish and
8 Game, concerning the extent, if any, to which fish and wildlife
9 would be affected by the change, and a statement of any measures
10 proposed to be taken for the protection of fish and wildlife in
11 connection with the change.

12 (d) Include sufficient information to demonstrate a reasonable
13 likelihood that the proposed change will not injure any other legal
14 user of water.

15 (e) Contain other appropriate information and be in the form
16 required by applicable regulations.

17 SEC. 7. Section 1701.3 is added to the Water Code, to read:

18 1701.3. (a) After a petition is filed, the board may request
19 additional information reasonably necessary to clarify, amplify,
20 correct, or otherwise supplement the information required to be
21 submitted under this article. The board shall provide a reasonable
22 period for submitting the information.

23 (b) The additional information may include, but is not limited
24 to, any of the following:

25 (1) Information needed to demonstrate that the change will not
26 injure any other legal user of water.

27 (2) Information needed to comply, or demonstrate compliance
28 with, any applicable requirements of the Fish and Game Code or
29 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
30 et seq.).

31 (3) Information needed to comply with Division 13
32 (commencing with Section 21000) of the Public Resources Code.

33 SEC. 8. Section 1701.4 is added to the Water Code, to read:

34 1701.4. If, within the period provided, the petitioner does not
35 provide the information requested pursuant to Section 1701.3, the
36 board shall cancel the petition, unless, for good cause shown, the
37 board allows additional time in which to submit the requested
38 information.

39 SEC. 9. Section 1703.1 is added to the Water Code, to read:

1 1703.1. Any interested person, within the time allowed in the
2 notice of petition, or within the time the board may allow for good
3 cause shown, may file with the board a written protest against
4 approval of the petition.

5 SEC. 10. Section 1703.2 is added to the Water Code, to read:

6 1703.2. The protest shall meet all of the following
7 requirements:

8 (a) State the name and address of the protestant.

9 (b) Be signed by the protestant, or the protestant's agent or
10 attorney.

11 (c) Clearly and specifically set forth the protestant's objections
12 to the approval of the petition, and state the bases for these
13 objections.

14 (d) Contain other appropriate information and be in the form
15 required by applicable regulations.

16 (e) Be served on the petitioner by the protestant by mailing a
17 duplicate copy of the protest to the petitioner or through service
18 undertaken in another manner determined to be adequate by the
19 board.

20 SEC. 11. Section 1703.3 is added to the Water Code, to read:

21 1703.3. The board may request from the protestant additional
22 information reasonably necessary to clarify, amplify, correct, or
23 otherwise supplement the information required to be submitted
24 pursuant to Section 1703.2. The board shall provide a reasonable
25 period for submitting the information, and may allow additional
26 time for good cause shown.

27 SEC. 12. Section 1703.4 is added to the Water Code, to read:

28 1703.4. The protestant and the petitioner shall make a good
29 faith effort to resolve the protest not later than 180 days from the
30 date on which the period provided pursuant to Section 1330
31 expires. For good cause, the board may allow additional time for
32 the protestant and the applicant to attempt to resolve the protest.

33 SEC. 13. Section 1703.5 is added to the Water Code, to read:

34 1703.5. The board may request from the protestant or the
35 petitioner additional information that the board determines is
36 reasonably necessary to attempt to resolve the protest. The board
37 shall provide a reasonable period for submitting the information,
38 and may allow additional time for good cause shown.

39 SEC. 14. Section 1703.6 is added to the Water Code, to
40 read:

1 1703.6. (a) The board may cancel a protest or petition for
2 failure to provide information requested by the board under this
3 article within the period provided.

4 (b) Except as provided in subdivisions (c) and (d), a protest
5 shall not be canceled for failure to submit information not in the
6 possession or under the control of the protestant if the protest
7 meets the requirements of Section 1703.2 and the petitioner is or
8 could be required to submit the information under Section 1701.1,
9 1701.2, and 1701.3.

10 (c) Subject to subdivision (d), if a protest is based on injury to
11 a legal user of water, the board may cancel the protest if the
12 protestant fails to submit any of the following information
13 requested by the board:

14 (1) Information that the protestant is required to submit to the
15 board to comply with Part 5.1 (commencing with Section 5100)
16 during any period after the protest is filed.

17 (2) Information that is reasonably necessary to determine if the
18 protestant has a valid water right.

19 (3) Information concerning the protestant's historical, current,
20 or proposed future diversion and use of water that is reasonably
21 necessary to determine if the proposed appropriation will result in
22 injury to the protestant's exercise of its water right.

23 (d) If the protest is based on an allegation that the proposed
24 change would not be in the public interest, would adversely affect
25 public trust uses, or would have adverse environmental impact, the
26 board may cancel the protest for failure to submit information
27 requested by the board if the board determines both of the
28 following:

29 (1) The public review period has expired for any draft
30 environmental document or negative declaration required to be
31 circulated for public review and comment pursuant to Division 13
32 (commencing with Section 21000) of the Public Resources Code.

33 (2) In the absence of the requested information, there is no
34 substantial evidence in light of the whole record to support the
35 allegation.

36 SEC. 15. Section 1704 of the Water Code is amended to read:

37 1704. ~~If at any time prior to the granting of permission to~~
38 ~~make such a change a protest is filed with the board against~~
39 ~~allowance of the proposed change the board shall fix a time and~~
40 ~~place for the hearing of the petition and of objections thereto.~~

1 (a) *The board, after a hearing, may approve with conditions, or*
2 *deny, a petition.*

3 (b) *Notice of hearing shall be given by mailing the notice not*
4 *less than 20 days before the date of hearing to the petitioner and*
5 *to any protestant by registered mail.*

6 (c) (1) *The board may, but is not required to, hold a hearing*
7 *prior to approving an unprotested petition, or if the board*
8 *determines that undisputed facts support the approval of the*
9 *petition and there is no disputed issue of material fact.*

10 (2) *The board may, but is not required to, hold a hearing prior*
11 *to denying a petition, if, after notice, the board determines that the*
12 *petition is defective, the petition fails to provide information*
13 *requested by the board, or undisputed facts support the denial of*
14 *the petition and there is no disputed issue of material fact.*

15 SEC. 16. Section 1825 of the Water Code is amended to read:

16 1825. It is the intent of the Legislature that the state should
17 take vigorous action to enforce the terms and conditions of ~~existing~~
18 ~~permits and~~ permits, licenses, certifications and registrations to
19 appropriate water, to enforce state board orders and decisions, and
20 to prevent the unlawful diversion of water.

21 SEC. 17. Section 1831 of the Water Code is amended to read:

22 1831. (a) When the board determines that any person ~~holding~~
23 ~~a permit or license to appropriate water pursuant to this division~~
24 ~~is violating any term or condition of the permit or license, the~~
25 ~~board may issue a preliminary, or threatening to violate, any~~
26 ~~requirement described in subdivision (d), the board may issue an~~
27 ~~order to any such that person to cease and desist from such~~
28 ~~violation. The preliminary~~

29 (b) *The cease and desist order shall require such person to*
30 *comply forthwith or in accordance with a time schedule set by the*
31 *board. The*

32 (c) *The board may issue a preliminary cease and desist order*
33 *only after notice and an opportunity for hearing pursuant to*
34 *Section 1834.*

35 (d) *The board may issue a cease and desist order in response to*
36 *a violation or threatened violation of any of the following:*

37 (1) *The prohibition set forth in Section 1052 against*
38 *unauthorized diversion or use of water subject to this division.*

39 (2) *Any term or condition of a permit, license, certification, or*
40 *registration issued under this division.*

1 (3) *Any order or decision of the board issued under this part,*
 2 *Section 275, Part 1 (commencing with Section 1000) of this*
 3 *division, Part 2 (commencing with Section 10500) of Division 6;*
 4 *Article 7 (commencing with Section 13550) of Chapter 7 of*
 5 *Division 7, or the public trust doctrine.*

6 SEC. 18. Section 1832 of the Water Code is amended to read:

7 1832. Cease and desist orders of the board shall be effective
 8 upon the issuance thereof. The board may, after notice and
 9 opportunity for hearing, upon its own motion or upon receipt of an
 10 application from an aggrieved person, modify, revoke, or stay in
 11 whole or in part any ~~preliminary~~ *cease and desist* order issued
 12 pursuant to this chapter. ~~Copies of any cease and desist order shall~~
 13 ~~be served personally or by registered mail on the person being~~
 14 ~~charged and shall be sent to any other person who appeared at the~~
 15 ~~hearing and requested a copy.~~

16 SEC. 19. Section 1833 of the Water Code is repealed.

17 ~~1833. At any time subsequent to the issuance of a preliminary~~
 18 ~~cease and desist order or any modification thereof, the board may~~
 19 ~~issue a final cease and desist order. No notice or opportunity for~~
 20 ~~hearing is required for issuance of a final cease and desist order.~~

21
 22 SEC. 20. Section 1834 of the Water Code is amended to read:

23 1834. (a) In the event that a violation of a ~~term or condition~~
 24 ~~of a permit or license~~ *requirement described in subdivision (d) of*
 25 *Section 1831* is occurring or threatening to occur, the board shall
 26 give notice in writing to the person allegedly engaged in the
 27 violation ~~of the term or condition. Such~~ *The* notice shall contain
 28 a statement of facts and information ~~which~~ *that* would tend to show
 29 the proscribed action, and notification of the requirements of
 30 subdivision (b).

31 (b) Unless a written request for a hearing signed by or on behalf
 32 of the notified party is delivered to or received by mail by the board
 33 within 15 days after receipt of the notice, the board may adopt ~~the~~
 34 ~~proposed preliminary~~ *a* cease and desist order, *based on the*
 35 *statement of facts and information set forth in the notice*, without
 36 a hearing.

37 SEC. 21. Section 1845 of the Water Code is amended to read:

38 1845. (a) Upon the failure of any person to comply with ~~any~~
 39 ~~valid final~~ *a* cease and desist order issued by the board pursuant
 40 to this chapter, the Attorney General, upon the request of the board,

1 shall petition the superior court for the issuance of prohibitory or
2 mandatory injunctive relief as appropriate, including a temporary
3 restraining order, preliminary injunction, or permanent injunction.

4 (b) (1) Any person or entity who violates a ~~valid final~~ cease
5 and desist order issued pursuant to this chapter may be liable for
6 a sum not to exceed one thousand dollars (\$1,000) for each day in
7 which the violation occurs.

8 ~~(c)~~

9 (2) *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. ~~It~~

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

14 (c) *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 the*
19 *corrective action, if any, taken by the violator.*

20 (d) All funds recovered pursuant to this section shall be
21 transferred to the General Fund of the state.

22 SEC. 22. Section 1850 of the Water Code is amended to read:

23 1850. Any factual or legal determinations made pursuant to a
24 ~~valid final~~ cease and desist order shall be conclusive and shall
25 preclude any party to the order from raising such issues in any
26 subsequent administrative proceeding.

FindLaw Legal Professionals Services Business Publications

FindLaw
for Legal Professionals

Click here to find out more:



Search! FindLaw

FindLaw : FindLaw California : Case Law :
California Case Law : 192 Cal.App.3d 847



Do Another California Case Law Search
Cases Citing This Case

Committee for a Progressive Gilroy v. State Water Resources Control Bd. , 192 Cal.App.3d 847

[No. C000501. Court of Appeals of California, Third Appellate District. June 15,
1987.]

COMMITTEE FOR A PROGRESSIVE GILROY, Plaintiff and Appellant, v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and
Respondents; CITY OF GILROY et al., Real Parties in Interest and Respondents

(Opinion by Sparks, J., with Blease, P. J., and Carr, J., concurring.)

COUNSEL

Tichinin & Mitchell and Bruce Tichinin for Plaintiff and Appellant.

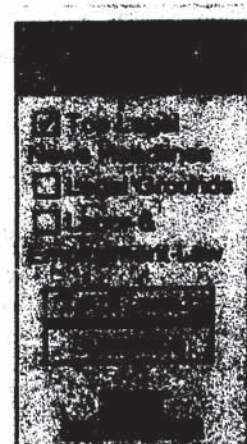
John K. Van de Kamp, Attorney General, R. H. Connett, Assistant Attorney
General, and M. Anne Jennings, Deputy Attorney General, for Defendants and
Respondents.

Berliner, Cohen & Biagini, Andrew L. Faber, Linda A. Callon and Russell J.
Hanlon for Real Parties in Interest and Respondents.

OPINION

SPARKS, J.

In this environmental case we are called upon to decide whether judicial review
of a decision of the State Water Resources Control Board concerning waste



discharge levels for a municipal sewage treatment facility is governed by the limitation period of the California Environmental [192 Cal.App.3d 852] Quality Act (CEQA) or the Porter-Cologne Water Quality Control Act. We hold that CEQA claims are governed by the CEQA statute of limitations.

Plaintiff Committee for a Progressive Gilroy petitioned for a writ of mandate to compel defendants Regional Water Control Board, Central Coast Region (Regional Board) and State Water Resources Control Board (State Board) to set aside certain orders and decisions relating to a wastewater treatment plant operated by the real parties in interest City of Gilroy and City of Morgan Hill. The trial court denied the petition on the ground that it was barred by the statute of limitations contained in the Porter-Cologne Water Quality Control Act. Plaintiff appeals, contending that the CEQA limitation applies instead and that its petition was timely under that act. Although we agree on that point, we nevertheless conclude that the trial court's decision was legally correct on other grounds and therefore affirm it.

Factual and Procedural Background

The cities of Gilroy and Morgan Hill jointly operate a municipal sewage wastewater treatment plant in south Santa Clara County. Wastewater is treated in aeration ponds in the facility and then discharged into 230 acres of evaporation-percolation ponds. The treated wastewater is eventually discharged into Llagas Creek, a tributary to Pajaro River. The facility was built to its current capacity as the result of a project to replace an antiquated plant in the mid-1970's. In connection with the original project the City of Gilroy acted as the "lead agency" under CEQA (Pub. Resources Code, § 21000 et seq.), and caused to be prepared a final environmental impact report (EIR) for a projected capacity of 6.4 million gallons per day (mgd) on an average daily dry weather flow basis. fn. 1 That final EIR was not judicially challenged.

Under the Porter-Cologne Act, the Regional Board was required to set discharge requirements for the revamped wastewater treatment facilities. (See Wat. Code, § 13263.) In 1981, after completion of the Gilroy-Morgan Hill facility expansion project, the Regional Board issued order number 81-02 setting requirements for the facility. Among other things, the order set a maximum flow of 6.1 mgd for the facility.

In 1982 and 1983, the cities encountered aeration and percolation problems in the operation of the facility. These problems resulted in excessive [192 Cal.App.3d 853] odors and in the unauthorized discharge of wastewater into Llagas Creek. In response to these difficulties the Regional Board issued a cease and desist order against the cities in 1983. As part of the enforcement action, and pursuant to a stipulation in a legal action, the Regional Board issued an order temporarily prohibiting the City of Gilroy from permitting new connections to its sewer system. In January 1984, the Regional Board adopted order number 84-06 prescribing requirements for discharge from the facility. Among the requirements was a reduction of the permitted daily flow to a maximum of 5.15 mgd.

The cities then undertook remedial action. They purchased and developed an additional 163 acres for percolation ponds. In connection with the pond development, the cities adopted a negative declaration under CEQA. fn. 2 (See Pub. Resources Code, §§ 21064, 21080, subd. (c).) Once again, no judicial challenge was made to this negative declaration. The cities also replaced the aeration system which had malfunctioned with a new, conventional system. In addition, the cities replaced the city officials responsible for the management of the plant, and contracted with a qualified consulting firm to manage the plant.

Email:	<input type="text"/>
Password:	<input type="text"/>
<input type="checkbox"/>	Keep me logged in until I sign out.
<input type="button" value="Sign In"/>	
Forgot Your Password ? click here!	
New User ?	
Click Here!	

In November 1984, after a hearing at the request of the cities, the Regional Board issued the first of the two orders challenged here, order number 84-97. Among other things, this order permitted an increase in plant capacity to 5.30 mgd. At that time the Regional Board also rescinded the connection ban against the City of Gilroy. In May 1985, after further hearings, the Regional Board adopted the second order, number 85-83, which permitted the cities to operate the facility at the originally approved level of 6.1 mgd.

Plaintiff sought review of the Regional Board's orders by the State Board. Among other grounds, plaintiff contended that the Regional Board was required to prepare a new EIR before permitting an increase in the capacity at which the cities could operate the facility. The State Board rejected that argument, ruling that the Regional Board was not required to prepare an EIR when setting requirements for an existing facility. The State Board reasoned that the "regulations implementing CEQA make clear that a new EIR need not be prepared where an agency is approving an existing facility. (Cal. Admin. Code, tit. 14, § 15301.) In fact, an EIR or negative declaration prepared by a lead agency (in this case, the Cities) is conclusively presumed to comply with CEQA for purposes of use by responsible agencies, such as the Regional Board. (Cal. Admin. Code, tit. 14, § 15231.) The only exceptions [192 Cal.App.3d 854] to this rule are where the environmental document is determined to be invalid in court proceedings (§ 15231(a)) and where a subsequent EIR is necessary (§ 15231(b)). There has been no such court ruling in this case, and none of the criteria requiring preparation of a subsequent EIR has been met. (Cal. Admin. Code, tit. 14, § 15162(a).)" The decision of the State Board upholding the orders of the Regional Board was adopted on August 22, 1985, and was served on plaintiff on September 3, 1985.

On January 30, 1986, plaintiff filed its petition for a writ of mandate against the two boards, naming the cities as real parties in interest. Plaintiff sought a writ compelling the boards to rescind their orders and decisions and to require the Regional Board to prepare an EIR prior to authorizing any increase in capacity for the Gilroy-Morgan Hill wastewater treatment facility. Plaintiff alleged that the Regional Board abused its discretion and failed to proceed in the manner required by law when it adopted the orders increasing the permitted flows first to 5.3 mgd and then to 6.1 mgd because it did not prepare an EIR for either order. The trial court denied the petition on the ground that it was untimely under Water Code section 13330, subdivision (a). This appeal followed.

Discussion

Plaintiff launches its appellate attack by asserting that the CEQA limitation period applies to this writ proceeding and not the Water Code statute of limitations. The Water Code limitation, it contends, applies only to litigation concerning duties imposed by the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) and not to cases such as this one relating only to CEQA duties. This follows, it claims, by virtue of the rules of statutory construction and for reasons of public policy. On the merits, plaintiff contends that the ordered capacity increases were not categorically exempt under the existing facilities exemption of CEQA because they constituted an expansion of use. Since these increases were not exempt and in light of the substantial evidence of their potentially significant effect on the environment, an EIR was required to be prepared before the increases could be approved.

The regional and state boards parry this thrust with a triple shield. First, they contend this action is governed by the Water Code and hence is timebarred by Water Code section 13330. Next, they assert that even if CEQA might otherwise apply, it does not control this case because the reissuance of water discharge requirements is not a CEQA project. Finally, they argue that even if those requirements could be deemed a project within the meaning of CEQA, such a project would have been exempt under the

[192 Cal.App.3d 855] existing facility exemption. The cities advance the same arguments and add one more: The Water Code contains an express CEQA exemption for waste discharge which applies to this case.

We begin by setting the legal stage for this judicial battle and start with the Water Code. By the enactment of the Porter-Cologne Act, the Legislature declared that "the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state." (Wat. Code, § 13000.) As the Court of Appeal observed in *Hampson v. Superior Court* (1977) **67 Cal.App.3d 472** [136 Cal.Rptr. 722], "[t]he state water quality control legislation is designed to regulate the factors and activities which may affect the quality of the waters of the state, in order to protect the quality of water for the use and enjoyment of all of the people of the state. To this end, the Legislature has established a legislative procedure for the development of a statewide program of water quality control. The plan provides for regional administration within the framework of statewide coordination and policy." (Id., at p. 484.) The state is divided into nine regions for purposes of the Porter-Cologne Water Quality Control Act, each of which is governed by a regional board. (Wat. Code, §§ 13200, 13201.) The governing board here was the Central Coast Regional Water Quality Control Board. (Wat. Code, § 13200, subd. (c).) Each regional board is mandated to "formulate and adopt water quality control plans for all areas within the region." (Wat. Code, § 13240.) In those plans the regional board is directed to establish such water quality objectives as will "ensure the reasonable protection of beneficial uses [of waters of the state] and the prevention of nuisance" (Wat. Code, § 13241.)

The regional boards are also directed to prescribe requirements for discharges of waste. Section 13263, subdivision (a) of the Water Code provides: "The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change therein, except discharges into a community sewer system, with relation to the conditions existing from time to time in the disposal area or receiving waters upon or into which the discharge is made or proposed. The requirements shall implement relevant water quality control plans, if any have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, **[192 Cal.App.3d 856]** and the provisions of Section 13241 [relating to regional water quality control plans]." fn. 3

Anyone who proposes to discharge waste which could affect the quality of the waters of this state must file a report of waste discharge with the appropriate regional board. (Wat. Code, § 13260.) In this case, the Gilroy City Administrator filed such a report on June 14, 1983, seeking authorization to increase the level of discharge for treated municipal wastewater into the Pajaro River sub-basin. When a waste discharge report is filed, the regional board must then "prescribe 'requirements' as to the nature of the proposed discharge. (Wat. Code, §§ 13263, 13377, 13378.) Such 'requirements' must implement any relevant Regional Water Quality Plan and must consider the beneficial uses of the water affected by the discharge." (*Pacific Water Conditioning Assn., Inc. v. City Council* (1977) **73 Cal. App.3d 546, 551** [140 Cal.Rptr. 812].)

Administrative review of the action of a regional board is by petition to the State Board. (Wat. Code, § 13320, subd. (a).) If dissatisfied with the decision of the State Board, any aggrieved party may seek timely judicial review by way of a writ of mandate. (Wat. Code, § 13330, subd. (a).)

We turn next to CEQA. Declaring "[t]he maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern" (Pub. Resources Code, § 21000, subd. (a)), the Legislature enacted CEQA in 1970. (Stats. 1970, ch. 1433). In general, CEQA "requires various

state and local governmental entities to submit environmental impact reports before undertaking specified activity. These reports compel state and local agencies to consider the possible adverse consequences to the environment of the proposed activity and to record such impact in writing." (Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 254-255 [104 Cal.Rptr. 761, 502 P.2d 1049].)

Under CEQA, the "lead agency, once determined, is responsible for conducting an initial study of the project to determine whether it may have a significant effect on the environment. If it is found that the project will [192 Cal.App.3d 857] have no significant effect on the environment, a negative declaration is prepared, describing the project and indicating that it will have no significant effect." (Cal. Condominium and Planned Development Practice (Cont.Ed.Bar 1984) § 2.79, p. 134; citations omitted.) On the other hand, if the initial study indicates that the project may have a significant effect on the environment, the lead agency must prepare an EIR. "All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment." (Pub. Resources Code, § 21100.) The EIR must include a detailed statement concerning the environmental effects, alternatives and other relevant factors concerning the project. (Pub. Resources Code, § 21100.)

Review of CEQA decisions where hearings and evidence are required and discretion vested in the public agency is by way of administrative mandamus. "Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure." (Pub. Resources Code, § 21168.) The stage set, we turn to the contentions on appeal.

I. Statute of Limitations

Water Code, section 13330, subdivision (a) provides in relevant part: "Within 30 days after service of a copy of a decision and order issued by the state board under Section 13320, any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof." fn. 4

[1a] It is this 30-day limitation period that the boards and cities contend bars plaintiff's petition. In this case plaintiff sought judicial review of the State Board's decision but did not file its petition for a writ of mandate for nearly five months, a period well in excess of the 30-day period required by this statute. Plaintiff retorts that its action is not time-barred because the only objection it is now asserting to the Regional Board's orders is the [192 Cal.App.3d 858] failure to prepare an EIR under CEQA. Plaintiff urges that the CEQA statute of limitations rather than the Water Code statute of limitations is applicable.

The statute of limitations applicable to CEQA is found in Public Resources Code section 21167. fn. 5 That section provides a number of limitations periods, which are generally short (30 or 35 days). In two circumstances an action may be brought within 180 days. These are where a public agency is carrying out or has approved a project without determining whether it will have a significant effect on the environment, and where the agency has determined that the project is not subject to CEQA but has failed to file a notice of the determination. (Pub. Resources Code, § 21167, subs. (a), (d).) Plaintiff's petition alleged that the boards improperly determined that the project was not subject to CEQA and since it is undisputed here that notice of determination triggering a 35-day statute of limitation was not

filed by either board, the time period for filing under CEQA was "within 180 days of the public agency's decision to carry out or approve the project" (Pub. Resources Code, § 21167, subd. (d).) Thus, plaintiff's petition was timely filed if the CEQA limitation period governs this action. [192 Cal.App.3d 859]

For the reasons which follow, we conclude that the CEQA statute of limitations applies when review is sought on CEQA grounds. First of all, the language of the CEQA statute of limitations expressly governs when "[a]ny action or proceeding" to review the decisions of any "public agency" on ground of noncompliance with CEQA must be commenced. (Pub. Resources Code, § 21167.) [2] Under settled rules of statutory construction, "a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." (Rose v. State of California (1942) 19 Cal.2d 713, 723-724 [123 P.2d 505].) This rule applies to statutes of limitations and consequently a specific statute must take precedence over general statutes of limitation. [1b] , [3] Thus, in Walters v. County of Plumas (1976) 61 Cal.App.3d 460, 469 [132 Cal. Rptr. 174], where one of the issues was whether a validating statute time limit applied to the claim that the county failed to prepare an EIR, we held that "the Environmental Quality Act of 1970 has its own statute of limitations, Public Resources Code section 21165 et seq., which being specifically applicable, takes precedence over the general provisions of Code of Civil Procedure section 860." By a parity of reasoning, the CEQA statute of limitations also takes precedence over the general provisions of Water Code section 13330.

[1c] Second, the scope of judicial review under the Porter-Cologne Act is incompatible with the review accorded under CEQA. Under the Water Code, "the court shall exercise its independent judgment on the evidence." (Wat. Code. § 13330, subd. (b).) In contrast, under CEQA "The court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record." (Pub. Resources Code. § 21168.) It would be anomalous to apply the Water Code limitation period and yet simultaneously use the different scope of review under CEQA. This judicial mongrelization has little to commend itself. Indeed, it would be unworkable. Under CEQA, with certain limited exceptions, the EIR is conclusively presumed to be valid for purposes of its use by responsible agencies "[i]f no action or proceeding alleging that an environmental impact report does not comply with the provisions of this division is commenced during the period prescribed in subdivision (c) of Section 21167" (Pub. Resources Code, § 21167.2.) This conclusive presumption is triggered by CEQA limitations and not some other statute of limitations applicable to some particular state agency. Moreover, the Legislature has expressly provided for review of [192 Cal.App.3d 860] CEQA decisions made by public agencies and has established a comprehensive statute of limitations for that review. Nothing in that statute suggests that the nature and timing of the review depends upon the identity of the state agency involved. Since CEQA applies to every public agency, many of which have their own statute of limitations for ordinary review purposes, literally scores of limitation periods might arguably govern review of CEQA decisions. Such a chameleonic construction would render the CEQA periods at best superfluous and at worst a trap for the unwary petitioner. Furthermore, when the Legislature has intended that the state and regional boards would be exempt from the requirements of CEQA it has expressly so stated. Thus in Water Code section 13339, a provision we consider below, when the orders are required by the Federal Water Pollution Control Act, the boards are explicitly relieved of the duty "to comply with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code [the CEQA chapter dealing with state agencies, boards and commissions] prior to the adoption of any waste discharge requirement" Nothing in any other Porter-Cologne Act statute expressly relieves any aggrieved party of the duty to comply with the CEQA limitations for commencing an action to review

CEQA decisions. Finally, we are enjoined as a matter of public policy to interpret CEQA "in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors*, supra, 8 Cal.3d at p. 259.) That injunction precludes our substituting some shorter statute of limitations for the CEQA limitation periods. In sum, the language of the statute, the structure of the statutory scheme, the rules of construction, and the dictates of public policy all lead inexorably to the conclusion that the CEQA statute of limitations governs the timing of judicial actions to review CEQA actions and decisions.

The Attorney General replies that it is only in rare cases that regional board orders are subject to CEQA requirements and that most writ proceedings involving the water boards seek review of matters unrelated to CEQA. That argument hardly rebuts the contention that CEQA limitations apply when review is actually sought for CEQA issues. Undeterred, the Attorney General replies that to hold that CEQA claims are subject to one limitation period while Porter-Cologne Act claims are subject to another would produce absurd results with two separate writ petitions filed at different times. Under this scenario, judicial economy would be squandered amid the spectre of inconsistent results. Although not the case here, we concede the possibility that a petitioner may well raise both CEQA and non-CEQA grounds in its writ application. The solution is to require one timely filing for all of the separate claims. [4a] Thus when a petitioner [192 Cal.App.3d 861] seeks review of a decision of a public agency on both CEQA and non-CEQA grounds, the petition must be timely filed for each claim. If not timely filed, the petitioner is foreclosed from obtaining review of those claims which are timebarred. The application of different statute of limitations to separate claims in one writ proceeding is not uncommon. Thus, for example, in *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal. App.3d 95 [167 Cal. Rptr. 203], petitioner sought a writ of mandate to invalidate orders of the Industrial Welfare Commission regulating the wages, hours and conditions of the employment in certain industries. One of the several grounds advanced was that the commission failed to comply with CEQA prior to its promulgation of the challenged orders. Although orders of the Commission are subject to ordinary judicial review (Lab. Code, § 1190), the trial court held that the association was barred from asserting CEQA claims by the CEQA statute of limitations contained in Public Resources Code section 21167, subdivisions (b) and (e). The Court of Appeal agreed that the claims were barred by the CEQA statute of limitations and affirmed. (*Id.*, at p. 125.) Implicit in this holding is the determination that when CEQA claims are joined with other grounds in an administrative mandamus proceeding, the CEQA statute of limitation applies to the CEQA claims and not the ordinary limitation period generally applicable to judicial review of the agency's decisions.

[1d] [4] In short, we hold that the trial court erred in denying plaintiff's petition on the ground that it was untimely under Water Code section 13330. fn. 6 But that error does not end the matter or compel reversal. It has long been "the rule that a correct decision of the trial court must be affirmed on appeal even if it is based on erroneous reasons." (*People v. Braeseke* (1979) 25 Cal.3d 691, 700 [159 Cal. Rptr. 684]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 259, p. 266.) In addition [192 Cal.App.3d 862] to the statute of limitation defense, the boards and cities tendered other grounds. Because they are entitled to have the judgment upheld if it was legally correct even though entered for the wrong reason, we turn to the remaining contentions.

II. Exemption for Waste Discharges

[6] We first dispose of the cities' contention that compliance with CEQA was exempted by Water Code section 13389. That section provides: "Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or

supplementary thereto."

The cities argue that since the challenged orders of the Regional Board established waste discharge requirements, this section exempted it from complying with CEQA prior to adopting them. In support of their position, they rely upon *Pacific Water Conditioning Assn., Inc. v. City Council*, supra, 73 Cal.App.3d 546. There the court concluded that the "Regional Board could and did properly prescribe waste discharge requirements for City [of Riverside] without preparation of an EIR under the specific exemption of Water Code section 13389." (Id., at p. 555.) The flaw in this argument, as plaintiff correctly notes, is that both the cities and the Pacific Water court ignore the limitation placed upon this exemption by Water Code section 13372. This section provides that the "provisions of this chapter [which includes section 13389] shall apply only to actions required under the Federal Water Pollution Control Act, as amended." The challenged orders here were issued under the exclusive authority of the Porter-Cologne Act and were not required by the Federal Water Pollution Control Act. The cities do not contend otherwise. By terms of the statutes read as a whole, the exemption under Water Code section 13389 simply does not apply in this case, a point conceded by the boards. Our agreement with plaintiff, however, stops here.

III. Challenged Orders Were No Longer Subject to Review

[7a] We agree with the boards and the cities that plaintiff may not now attack the Regional Board's discharge order under CEQA, not because its petition was untimely filed but rather because on the merits the reestablishment of discharge requirements within levels previously approved under [192 Cal.App.3d 863] CEQA was not a new project subject to a new EIR. [8] It is true that a project, by definition, includes "[a]ctivities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Pub. Resources Code, § 21065, subd. (c).) But it is equally true that a project "means the whole of an action, which has a potential for resulting in a physical change in the environment" (Cal. Admin. Code, tit. 14, § 15378, subd. (a).) It refers to the underlying activity which may be subject to approval by one or more governmental agencies; it does not refer to each of the several approvals sequentially issued by different agencies. "The term 'project' does not mean each separate governmental approval." (Cal. Admin. Code, tit. 14, § 15378, subd. (c). See also *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171-1172 [227 Cal.Rptr. 688].)

[7b] In this case the project for which an EIR was required was the expansion of the cities' wastewater treatment plant. A final EIR was prepared for that project, and a negative declaration was prepared for the addition of new percolation ponds. Both of those CEQA actions have long been final and cannot be challenged at this time. The reestablishment of discharge requirements within previously approved levels is merely a separate governmental reapproval of the original project and does not itself constitute a new project under CEQA. Unless a subsequent or supplemental EIR is required, the original CEQA actions are conclusive as to the regional and state boards. (Pub. Resources Code, §§ 21080.1, 21167.2.) A subsequent or supplemental EIR may be required where substantial changes are proposed in the project, there are substantial changes in the circumstances under which the project is undertaken which require a major revision in the EIR, or there is new information which was not known and could not have been known at the time of the EIR. (Pub. Resources Code, § 21166.) Plaintiff has not claimed that any of these conditions exist; instead it claims that the order for discharge requirements permitting a return to the original approved capacity is itself a project which requires a new EIR. That claim is untenable. When, as here, "an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of [specified] events occurs" Since none of those events occurred in this case, no additional EIR was required. fn. 7 [192 Cal.App.3d 864]

IV. Existing Facilities Exemption

[9] Finally, we also agree with the boards and cities that the waste discharge requirements set by the Regional Board were exempt from CEQA under the "[e]xisting facility" categorical exemption. (Cal. Admin. Code, tit. 14, §§ 15301, subd. (b), 15302. See Pub. Resources Code, §§ 21083, 21084, 21087.) Public Resources Code section 21084 directs the Office of Planning and Research to prepare and develop proposed guidelines for the implementation of CEQA. The Legislature has further directed that the guidelines 'shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from the provisions of this division.' (Pub. Resources Code, § 21084, subd. (a); see also *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 835-838 [211 Cal.Rptr. 884] (conc. opn. of Blease, J.) In compliance with these directives, guidelines for categorical exemptions of certain classes of projects have been promulgated. One of those classes "consists of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to: ... [¶] (b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services." (Cal. Admin. Code, tit. 14, § 15301, subd. (b).)

The cities fully complied with CEQA in building the facility to treat 6.1 mgd, and in adding percolation ponds to the facility. As we have recounted, in the exercise of its authority the Regional Board approved usage up to 6.1 mgd. Thereafter, in view of certain violations, the Regional Board imposed a reduction upon the cities. In response, the cities thereafter took remedial action and complied with CEQA in that undertaking. In the most recent orders the original capacity was restored. Since the project was originally built and approved for 6.1 mgd in full compliance with CEQA, the order restoring that capacity related to an existing facility and was exempt from CEQA.

Plaintiff asserts ex cathedra that a substantial expansion of use was authorized by the challenged orders and hence the categorical exemption for an existing facility does not apply here. That assertion is rebutted by the express finding of the State Board: "[Plaintiff] claims that the increase in flow allowed by the requirements may have a significant effect on the environment, and constitutes a major addition to the facility. It is not necessary to consider, however, the magnitude of the increases from 5.15 mgd to 6.1 [192 Cal.App.3d 865] mgd, since the original EIR clearly considered even a larger flow than this -- 6.4 mgd. The exemption for existing facilities has been properly applied in this case." We agree.

The judgment is affirmed.

Blease, Acting P. J., and Carr, J., concurred.

-FN 1. The lead agency is "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Pub. Resources Code, § 21067.)

-FN 2. A negative declaration is "a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report." (Pub. Resources Code, § 21064.)

-FN 3. The discharge of waste into state waters is a privilege and consequently no vested right can be obtained to continue such discharge. (Wat. Code, § 13263, subd. (g).) The regional board may review

and revise discharge requirements on the application of any affected person or on its own motion, and all requirements must be periodically reviewed. (Wat. Code, § 13263, subd. (e).) The requirements imposed by the board may contain a time schedule which is subject to revision in the discretion of the board. (Wat. Code, § 13263, subd. (c).)

-FN 4. In such a writ proceeding, the "evidence before the court shall consist of the record before the state board, including the regional board's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division. In every such case, the court shall exercise its independent judgment on the evidence." (Wat. Code, § 13330, subd. (b).)

-FN 5. Public Resources Code section 21167 provides: "Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on grounds of noncompliance with this division shall be commenced as follows: [¶] An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project. [¶] (b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152. [¶] (c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency. [¶] (d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If such notice has not been filed, such action or proceeding shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project. [¶] (e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152."

-FN 6. Plaintiff also contends that, in any event, it was entitled pursue this action even if the CEQA statute of limitations did not apply because the Water Code limitation period does not apply to "other civil remedies." (Wat. Code, § 13330, subd. (a).) We reject this alternative contention. The purpose of the "other civil remedies" exclusion is clear. The decisions of the state and regional boards with respect to wastewater discharge requirements do not immunize the actions of the discharger from other regulations or actions. Pursuant to Water Code section 13002, cities and counties may regulate water discharges and may declare and abate nuisances, the Attorney General may act to enjoin any pollution or nuisance, other state agencies may enforce and administer other laws, and private citizens may maintain an action against a nuisance or for relief against contamination or pollution, all without limitation by the decisions or rulings of the state or regional boards. (See *People v. City of Los Angeles* (1958) 160 Cal.App.2d 494, 502-503 [325 P.2d 639].) In such actions the moving party will not be precluded from pursuing a remedy for the failure to have pursued judicial review of the state and regional board's action. (Wat. Code, § 13330, subd. (a).) However, where the moving party seeks direct judicial review of the state and regional board decisions unrelated to CEQA, then it must comply with

the requirements of section 13330, subdivision (a).

-FN 7. Moreover, in the event a subsequent or supplementary EIR were required it would be the duty of the cities, as the "lead agency" to prepare it. (*Bakman v. Department of Transportation* (1979) 99 Cal.App.3d 665, 679-680 [160 Cal.Rptr. 583].)

[Return to Top](#)

Do Another California Case Law Search

Citation Search Select

Party Name Search

Full-Text Search

Copyright © 1993-2000 AccessLaw

FindLaw
RESOURCES 

LEGAL NEWS: [Top Headlines](#) · [Supreme Court](#) · [Commentary](#) · [Crime](#) · [Cyberpace](#) · [International](#)
US FEDERAL LAW: [Constitution](#) · [Codes](#) · [Supreme Court Opinions](#) · [Circuit Opinions](#)
US STATE LAW: [State Constitutions](#) · [State Codes](#) · [Case Law](#)
RESEARCH: [Dictionary](#) · [Forms](#) · [LawCrawler](#) · [Library](#) · [Summaries of Law](#)
LEGAL SUBJECTS: [Constitutional](#) · [Intellectual Property](#) · [Criminal](#) · [Labor](#) · [more...](#)
GOVERNMENT RESOURCES: [US Federal](#) · [US State](#) · [Directories](#) · [more...](#)
INTERNATIONAL RESOURCES: [Country Guides](#) · [Trade](#) · [World Constitutions](#) · [more...](#)
COMMUNITY: [Message Boards](#) · [Newsletters](#) · [Greedy Associates Boards](#)
TOOLS: [Office](#) · [Calendar](#) · [CLE](#) · [Email](#) · [FAX](#) · [West WorkSpace](#) · [FirmSite](#)

[Advertising Info](#) [Add URL](#) [Help](#) [Comments](#)

[Jobs at FindLaw](#) [Site Map](#)

[Company](#) | [Privacy Policy](#) | [Disclaimer](#)

Copyright © 1994-2001 FindLaw



**California Environmental
Protection Agency**
2001 Legislative Package
AB 946 (Kelley)

Water Rights
Sponsor: State Water Resources Control Board

SUMMARY:

This bill would correct deficiencies in the State Water Resources Control Board's (SWRCB's) water rights cease and desist order authority, improve water right petition processing, and clarify that Water Code § 1211 only applies to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.

BACKGROUND:

The SWRCB administers the state's water rights and water quality control programs. Effective enforcement is important to both programs, yet the state's water right enforcement program is less effective than for water quality control.

PROBLEM:

Water Rights Enforcement: Based on the recommendations of the Governor's Commission to Review California Water Right Law, the Legislature enacted a statute in 1980 authorizing the SWRCB to issue cease and desist orders for water right violations. Although the statute said the state should take vigorous enforcement action, there have been obstacles to making effective use of the authority to issue and enforce cease and desist orders including limitations on the kinds of violations for which a cease and desist order may be issued, complex procedures for issuance of orders, and the inability to impose administrative civil liability for violations.

Water-Right Petition Process: Existing law requires that before the SWRCB approves a change in a permitted or licensed water right, the SWRCB must find that the change will not result in injury to other legal users of water. But many petitioners fail to provide the information needed to make this finding, or provide inadequate information concerning the environmental impacts of the proposed change. Similarly, some protestants fail to provide the information necessary to properly evaluate their protests. This makes the current water right petition process long and subject to delays due to inadequate information, and delays on the part of the petitioner or protestants.

Treated Waste Water Change: Water Code § 1211 currently requires the owner of any waste water treatment plant to obtain the approval of the SWRCB prior to making any change in the point of discharge, place of use, or purpose of use of treated waste water. While these procedures provide protection of third party water right holders and

environmental interests that might be adversely affected by reduction in streamflows, they also require review of many water recycling projects that pose no threat of these adverse impacts because they do not reduce streamflows.

ANALYSIS:

AB 946 would:

- Apply the provisions of the Water Code concerning water right application processing that were added by Chapter 323, Statutes of 1997 (SB 849, Kelley) to water right petition processing. The bill would authorize the SWRCB to request supplemental information from a petitioner or protestant that is reasonably necessary to evaluate the petition or protest, including information needed to demonstrate water availability and to comply with environmental laws. If the petitioner or protestant does not provide the information, the petition or protest may be canceled.
- Provide that the treated waste water change petition in Water Code § 1211 (that requires the owner of a waste water treatment plant to obtain the approval of the SWRCB before making any change in the point of discharge, place of use, or purpose of use of treated waste water) applies only to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.
- Clarify procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.
- Authorize the SWRCB to issue a cease and desist order to any person who the SWRCB determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the SWRCB, or prescribed orders or decisions of the SWRCB. Additionally the bill would authorize the SWRCB to impose that liability administratively on any person who violates a cease and desist order.
- Declare legislative intent that the state take action to enforce certifications and registrations to appropriate water and to enforce SWRCB orders and decisions.

CONTACT:

Judy Verhaag, Acting Legislative Director
State Water Resources Control Board
(916) 341-5257



RECEIVED
MAR 26 2001
CAPITOL OFFICE

OFFICE OF THE GOVERNOR

March 19, 2001

Assemblymember David Kelley
State Capitol, Room 4162
Sacramento, CA 95814

Dear Assemblymember Kelley:

This is to advise you that the Administration supports Assembly Bill 946 as introduced on February 23, 2001.

Please give me a call if you have any questions. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Michael Gotch".

Michael Gotch
Legislative Secretary



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Executive Office

1001 J Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 341-5621 • Internet Address: <http://www.swrcb.ca.gov>

CC UWDY
FILE
CEPA
G.O. Gray Davis
Governor



MAR 23 2001

The Honorable Dean Florez
Chair, Assembly Committee on Water, Parks and Wildlife
California State Assembly
State Capitol, Room 2141
Sacramento, CA 95814

APR 5 2001

Dear Assembly Member Florez:

RE: AB 946 (KELLEY): WATER RIGHTS

I am writing on behalf of the State Water Resources Control Board (SWRCB), the sponsor of AB 946, to urge your support of this bill, which is scheduled for hearing on April 3. AB 946 would correct deficiencies in the SWRCB's water rights cease and desist order authority, improve water right petition processing, and clarify that Water Code § 1211 only applies to changes in the discharge or use of treated wastewater that result in reduced flow in any portion of the watercourse.

On enforcement, AB 946 would authorize the SWRCB to issue a cease and desist order to any person violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, SWRCB-issued certification or registration, or SWRCB-prescribed orders or decisions. Additionally, the bill would authorize the SWRCB to impose that liability administratively on any person who violates a cease and desist order. The bill also declares legislative intent that the state take action to enforce certifications and registrations to appropriate water and to enforce SWRCB orders and decisions.

To expedite water right petition processing, AB 946 would extend the water right application processing improvements made in 1997 (Ch. 323, SB 849, Kelley) to water right petition processing. The SWRCB would be authorized to request supplemental information from a petitioner or protestant that is necessary to evaluate the petition or protest. If the petitioner or protestant does not provide the information, the bill allows the SWRCB to cancel the petition or protest. The bill also clarifies procedures for petitioning to change the point of diversion, place of use, or purpose of use of water that is described in an application, permit or license.

Existing law requires the owner of a wastewater treatment plant to obtain SWRCB approval before making any change in the point of discharge, place of use, or purpose of use of treated wastewater. AB 946 would provide that the wastewater change petition applies only to changes in the discharge or use of treated wastewater that result in reduced flow in any portion of the watercourse.

California Environmental Protection Agency



The Honorable Dean Florez

- 2 -

MAR 23 2001

APR 5 2001

If you have any questions or wish to discuss the bill further, please feel free to contact me at (916)341-5615, or our Acting Legislative Director, Judy Verhaag, at (916)341-5257.

Sincerely,



Edward C. Anton,
Acting Executive Director

cc. Assembly Member David Kelley
Members, Assembly Water, Parks and Wildlife Committee

California Environmental Protection Agency



JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AB 946 (KELLEY)
WATER RIGHTS.

Version: 2/23/01 As Introduced

Vote: Majority

Support if Amended

Vice-Chair: Richard Dickerson

Tax or Fee Increase: No

A bill mainly intended to streamline board authorities, but would also expand their authority to issue cease and desist orders for 'threatened violations' and impose civil penalties for a violation of the order even if it did not result in a violaton of the Water Code. Maintains differing processes for the notice of violators by the board and differing timelines for requesting certain hearings that may lead the regulated community to not fully understand their rights.

Proposed amendments: see comments.

Policy Question

Should an aggrieved party be able to file a writ of mandate for review of a decision or order before reconsideration by the SWRCB is complete?
Should changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse be excepted from review and approval by the board?
Should the board be able to cancel a protest or petition for water rights for failure to provide information requested by the board?
Should the board, after a hearing (except in limited circumstances), be able to approve with conditions, or deny a water rights petition?

Should the authority of the board to issue a cease and desist order be extended to threatened unauthorized diversions or violations of permits?
Should the board be extended the ability to impose civil penalties for violations of a cease and desist order?

Summary

Allows an aggrieved party to file a writ of mandate

Assembly Republican	Water Votes (0-0) 4/3/01
Ayes: None	
Noes: None	
Abs. / NV: None	
Assembly Republican	Votes (0-0) 1/1/01
Ayes: None	
Noes: None	
Abs. / NV: None	
Assembly Republican	Votes (0-0) 1/1/01
Ayes: None	
Noes: None	
Abs. / NV: None	
Assembly Republican	Votes (0-0) 1/1/01
Ayes: None	
Noes: None	
Abs. / NV: None	

for review of a decision or order before final reconsideration by the board in circumstances where the decision or order is issued under authority delegated to an officer or employee of the board. Exempts the need to seek board approval for changes in the point of discharge, place of use, or purpose of use of treated wastewater that does not result in decreasing the flow in any portion of a watercourse.

Provides the board with the authority to request additional information from a petitioner or protestor of a water rights petition and allows the board to cancel a protest or petition for failure to provide adequate information. Except that a protest may not be cancelled for failure to provide information that is not in the control or possession of the protestor. Requires the protestor and petitioner to make a good faith effort to resolve the protest not later than 180 days from the final date a protest may be filed. Allows the board, after hearing, to approve with conditions, or deny a petition.

The board is not required to hold a hearing prior to approving a petition if the petition is not protested, or if the board determines that undisputed facts support the approval of the petition and no disputed issue is of material fact.

The board may deny a petition without hearing 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.

Adds to Legislative intent that the state should take vigorous action to enforce the terms and conditions of certifications and registrations to appropriate water and to enforce board orders and decisions to prevent the unlawful diversion of water?

Provides that the board may issue a cease and desist order for a violation or threatened violation of the prohibition against unauthorized diversion or use of water, or of any term or condition of a permit, license, certification, or registration, or of any order or decision by the board or the public trust doctrine.

Provides that the board may administratively impose civil liabilities for a violation of a cease and desist order.

Support

None on file

Opposition

None on file

Arguments In Support of the Bill

Applies the current provisions concerning water right applications to water right petitions. The bill that added the provisions to water right applications was unanimously passed in 1997.

Adds additional legal instruments issued by the board to the instruments that should be vigorously enforced, according to legislative intent.

Limits the need to seek approval from the board for changes to wastewater discharges or use to only situations that decrease the flow in any portion of a watercourse.

Simplifies and expands the board's ability to issue cease and desist orders and allows the board to issue them in additional circumstances of threatened violations.

Extends to the board the authority to administratively levy civil fines for violations of a cease and desist order.

Arguments In Opposition to the Bill

The board should not be able to issue a cease and desist order when no actual violation has occurred and then impose civil penalties for a violation of the order. This may result in civil penalties being imposed when no violation of the referenced statutes actually occurred.

Increases the civil liability for unauthorized diversion from \$500 per day to \$1,000 per day if it also involves the violation of a cease and desist order.

Maintains differing timeline requirements for an alleged violator to request a hearing depending on if the violator is responding to a civil penalty hearing or cease and desist order hearing and provides for different notification processes by the board. This may lead to confusion among the regulated community in their understanding of their rights.

Fiscal Effect

Unknown.

Comments

The author references the State Water Resources Control Board as the sponsor. The board provides the following background:

SB 849 (Kelley) (chapter 323, statutes of 1997) authorized the SWRCB to take action to expedite water right application processing, among other provisions. The bill passed without any votes in

opposition. This measure would extend those same procedures to water right petitions.

The provisions on cease and desist orders and changes in point of discharge of treated wastewater were enacted in 1980 (chapter 933, statutes of 1980) to implement the recommendations of the Governor's Commission to Review California Water Rights Law, Final Report 1978. The commission was chaired by former Chief Justice Donald Wright and included leading authorities on water rights.

The following amendments will assist in clarifying the code and establish more consistent timelines for hearing requests. It will also eliminate the ability of the board to issue a cease and desist order when no violation has occurred. The board would retain the ability to seek a preliminary injunction through a court of law and have expanded ability to administratively impose civil penalties for violations of a cease and desist order where an actual violation occurred.

AMENDMENTS:

Page 9, Line 21, SEC. 17. Section 1831 of the Water Code is amended to read: 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 such violation. (b) The cease and desist order shall require such 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 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 order or decision of the board issued under this part, Section 275, Part 1 (commencing with Section 1000) of this division, Part 2 (commencing with Section 10500) of Division 6; Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, or the public trust doctrine.

Page 10, Line 22, SEC. 20. Section 1834 of the Water Code is amended to read: 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 to the person allegedly engaged in the violation ~~in writing~~ *by personal notice or certified mail, and shall inform the party so served that the party may request a hearing within 20 days after the party has been served.* 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 ~~15~~ 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.

Page 9, Line 16, SEC. 16. Section 1825 of the Water Code is amended to read: 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. *The term 'vigorous enforcement' should not necessarily be construed to mean the imposition of financial penalties against unknowing violators.*

This last amendment will reinforce the Legislature's intent that water laws should be vigorously enforced, but also to emphasize that it is not intended to provide the board an unmitigated excuse to impose financial penalties.

Policy Consultant: Greg Hurner 3/31/01

Fiscal Consultant:

3/14

RECEIVED
MAR 14 2001
CAPITOL OFFICE

Assembly Committee on Water, Parks and Wildlife
Dean Florez, Chairman

BACKGROUND INFORMATION REQUEST

Measure: AB 946

Author: Kelley

1. Who is the source of the bill? Are they the sponsor? What person, organization, or governmental entity requested introduction?
STATE WATER RESOURCES CONTROL BOARD Eric Feller 341-5258

2. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number summary of bill's content, and disposition of the bill. (Use attachments if necessary)

SB 849 (Kelley) Chapter 323, Statutes of 1997. Authorized the SWRCB to take action to expedite water right application processing.

Also, see attached e-mail msg from Eric Feller re other legislation.

3. Have there been any interim committee hearings or reports on the bill? If so, when. Please identify report.
NO

4. PLEASE ATTACH A SHEET EXPLAINING IN DETAIL THE PROBLEM OR DEFICIENCY IN THE PRESENT LAW WHICH THE BILL SEEKS TO REMEDY AND HOW THE BILL RESOLVES THE PROBLEM. PLEASE ALSO LIST ALL WITNESSES YOU PLAN TO HAVE TESTIFY.

5. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

6. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

7. If you plan substantive amendments to this bill prior to hearing, please attach a detailed explanation of the substance of the amendments to be prepared. Please recall that for a Tuesday hearing, all substantive amendments must be received by the committee in Legislative Counsel form the Tuesday prior to the committee hearing.

STAFF PERSON TO CONTACT: Nancy Lucchesi Newbill PHONE: 319-2442
JV

oo REMINDER oo

ALL COMMITTEE WORKSHEETS SHALL BE RETURNED TO THE COMMITTEE, ROOM 2141, NO LATER THAN FIVE (5) LEGISLATIVE DAYS AFTER RECEIPT.

PLEASE PROVIDE 2 STAPLED COPIES OF THIS SHEET AND ALL OTHER SUPPORTING DOCUMENTATION INCLUDING LETTERS OF SUPPORT AND OPPOSITION.

5/23/01
gh

Newbill, Nancy

From: Eric Feller [EFeller@exec.swrcb.ca.gov]
Sent: Wednesday, March 14, 2001 11:54 AM
To: nancy.newbill@asm.ca.gov
Subject: additional legislative history for AB 946

BACKGROUND
Info

The provisions on cease and desist orders and changes in point of discharge of treated wastewater were enacted in 1980 (Chapter 933, Statutes of 1980) to implement recommendations of commission, chaired by former Chief Justice Donald Wright and including leading authorities on water rights, established to review and recommend changes in California water rights law. (Governor's Commission to Review California Water Rights Law, Final Report (1978)).

Eric Feller
Legislative Analyst
State Water Resources Control Board
1001 I Street, 24th floor, Sacramento, CA 95814
ph. 916-341-5258 or 341-5251
fax. 916-341-5252
efeller@exec.swrcb.ca.gov

It is the province of knowledge to speak, and it is the privilege of wisdom to listen.
-- Oliver Wendell Holmes, Sr.

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at: www.swrcb.ca.gov.

Sent to everyone

ERIC FELLER AND/OR ANDY SAWYER, BOTH WITH SWRCB, WILL TESTIFY

SUMMARY:

This bill would correct deficiencies in the State Water Resources Control Board's (SWRCB's) water rights cease and desist order authority, improve water right petition processing, and clarify that Water Code § 1211 only applies to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.

BACKGROUND:

The SWRCB administers the state's water rights and water quality control programs. Effective enforcement is important to both programs, yet the state's water right enforcement program is less effective than for water quality control.

PROBLEM:

Water Rights Enforcement: Based on the recommendations of the Governor's Commission to Review California Water Right Law, the Legislature enacted a statute in 1980 authorizing the SWRCB to issue cease and desist orders for water right violations. Although the statute said the state should take vigorous enforcement action, there have been obstacles to making effective use of the authority to issue and enforce cease and desist orders including limitations on the kinds of violations for which a cease and desist order may be issued, complex procedures for issuance of orders, and the inability to impose administrative civil liability for violations.

Water-Right Petition Process: Existing law requires that before the SWRCB approves a change in a permitted or licensed water right, the SWRCB must find that the change will not result in injury to other legal users of water. But many petitioners fail to provide the information needed to make this finding, or provide inadequate information

concerning the environmental impacts of the proposed change. Similarly, some protestants fail to provide the information necessary to properly evaluate their protests. This makes the current water right petition process long and subject to delays due to inadequate information, and delays on the part of the petitioner or protestants.

Treated Waste Water Change: Water Code § 1211 currently requires the owner of any waste water treatment plant to obtain the approval of the SWRCB prior to making any change in the point of discharge, place of use, or purpose of use of treated waste water. While these procedures provide protection of third party water right holders and environmental interests that might be adversely affected by reduction in streamflows, they also require review of many water recycling projects that pose no threat of these adverse impacts because they do not reduce streamflows.

ANALYSIS:

AB 946 would:

- Apply the provisions of the Water Code concerning water right application processing that were added by Chapter 323, Statutes of 1997 (SB 849, Kelley) to water right petition processing. The bill would authorize the SWRCB to request supplemental information from a petitioner or protestant that is reasonably necessary to evaluate the petition or protest, including information needed to demonstrate water availability and to comply with environmental laws. If the petitioner or protestant does not provide the information, the petition or protest may be canceled.
- Provide that the treated waste water change petition in Water Code § 1211 (that requires the owner of a waste water treatment plant to obtain the approval of the SWRCB before making any change in the point of discharge, place of use, or purpose of use of treated waste water) applies only to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.
- Clarify procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.
- Authorize the SWRCB to issue a cease and desist order to any person who the SWRCB determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the SWRCB, or prescribed orders or decisions of the SWRCB. Additionally the bill would authorize the SWRCB to impose that liability administratively on any person who violates a cease and desist order.
- Declare legislative intent that the state take action to enforce certifications and registrations to appropriate water and to enforce SWRCB orders and decisions.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Date of Hearing: April 3, 2001

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Dean Florez, Chair
AB 946 (Kelley) – As Introduced: February 23, 2001

SUBJECT: Appropriation of Water

SUMMARY: This bill makes changes to the State Water Resources Control Board's (SWRCB's) authority to issue licenses and permits for appropriation of water, and to enforce the terms of those licenses and permits. Specifically, this bill:

- 1) Requires prescribed information to be included in a petition for change of place of diversion, change of use, or change of purpose of a license or permit of appropriation, and authorizes SWRCB to request additional information.
- 2) Authorizes and establishes procedures for filing of a written protest by any interested person against approval of a petition for change of place of diversion, change of use, or change of purpose.
- 3) Authorizes SWRCB to approve a petition for change of place of diversion, change of use, or change of purpose with conditions or to deny the petition.
- 4) Provides that a person filing a court challenge to a decision or order of the SWRCB does not have to exhaust the administrative remedy of reconsideration by the board, except where the decision or order was made under authority delegated by the board to an officer or employee of the board.
- 5) Deletes a provision relating to exercise of independent judgment by the court.
- 6) States 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, and to enforce SWRCB orders and decisions.
- 7) Authorizes SWRCB to issue a cease and desist order to prevent unauthorized diversion or use of water or violation of a term of a permit or license.
- 8) Provides that civil liability for violation of a cease and desist order may be imposed by the superior court.

EXISTING LAW: Provides procedures for the filing and granting of petitions for the appropriation of water, and provides enforcement mechanisms to prevent violations of the terms and conditions of licenses and permits to appropriate water.

FISCAL EFFECT: Unknown.

COMMENTS: This bill is the result of a process in which SWRCB convened a Water Rights Working Group and listened to stakeholders about how to improve and streamline the existing water rights application process. The bill is intended to correct deficiencies in SWRCB's

enforcement mechanisms, improve processing of water rights petitions, and clarify that Water Code Section 1211 only applies to changes in the discharge or use of treated wastewater that result in reduced flow in a watercourse.

The existing law regarding cease and desist orders for water rights violations is too narrow, and limits the types of violation for which cease and desist orders may issue. The existing law also provides complex procedures for issuance of orders and does not allow for imposition of administrative civil liability for violation of cease and desist orders. This bill corrects these deficiencies.

This bill provides SWRCB with sufficient information in the petition process to assess whether a change in diversion or use of water will result in injury to other users of water. Requirement of sufficient information will expedite the petition process and avoid delays in reaching decisions.

Water Code Section 1211 requires the owner of a wastewater treatment plant to obtain the approval of SWRCB before making changes in the point of discharge, place of use, or purpose of use of treated water. This rule is too broad, and leads to the review of changes that do not result in a decrease in flow and pose no threat of adverse impacts to third-party water rights holders and environmental interests. This bill clarifies that changes with no impact need not be reviewed.

REGISTERED SUPPORT / OPPOSITION:

Support

State Water Resources Control Board (sponsor)
The Office of Governor Gray Davis

Opposition

None on file.

Analysis Prepared by: Jeff Volberg / W., P. & W. / (916) 319-2096

AB 946 (Kelley)
COMMITTEE STATEMENT
ASSEMBLY WATER, PARKS AND WILDLIFE COMMITTEE
APRIL 3, 2001

MR. CHAIRMAN & MEMBERS:

AB 946, SPONSORED BY THE STATE WATER RESOURCES CONTROL BOARD, CORRECTS DEFICIENCIES IN THE BOARD'S WATER RIGHTS CEASE AND DESIST ORDER AUTHORITY, IMPROVES WATER RIGHT PETITION PROCESSING, AND CLARIFIES WATER CODE PROVISIONS REGARDING DISCHARGE OR USE OF TREATED WASTEWATER.

- FIRST, AB 946 AUTHORIZES THE STATE WATER BOARD TO ISSUE A CEASE AND DESIST ORDER TO ANY PERSON VIOLATING A PROHIBITION AGAINST UNAUTHORIZED DIVERSION OR USE OF WATER, ANY TERM OR CONDITION OF A PERMIT OR LICENSE, STATE BOARD-ISSUED CERTIFICATION OR REGISTRATION, OR STATE BOARD-PRESCRIBED ORDER OR DECISION, AND TO IMPOSE THAT LIABILITY ADMINISTRATIVELY ON ANY PERSON WHO VIOLATES A CEASE AND DESIST ORDER.
- SECOND, THIS BILL EXTENDS THE WATER RIGHT APPLICATION PROCESSING IMPROVEMENTS MADE BY MY 1997 BILL, SB 849, TO WATER RIGHT PETITION PROCESSING. AB 947 HELPS EXPEDITE WATER RIGHT PETITION PROCESSING BY AUTHORIZING THE STATE WATER BOARD TO REQUEST NECESSARY SUPPLEMENTAL INFORMATION NECESSARY TO EVALUATE THE PETITION OR PROTEST, AND ALLOWS THE STATE WATER BOARD TO CANCEL THE PETITION OR PROTEST IF THE PARTY DOES NOT PROVIDE THE INFORMATION. IT ALSO CLARIFIES PROCEDURES FOR PETITIONING TO CHANGE THE POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF WATER THAT IS DESCRIBED IN AN APPLICATION, PERMIT OR LICENSE.
- FINALLY, AB 946 WOULD ELIMINATE UNNECESSARY STATE BOARD REVIEW OF WATER RECYCLING AND OTHER PROJECTS THAT POSE NO THREAT OF ADVERSE ENVIRONMENTAL IMPACTS AND DO NOT REDUCE STREAMFLOWS.
- WITH ME TODAY ARE STAFF FROM THE STATE WATER BOARD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Redmond, Mark

From: Eric Feller [EFeller@exec.swrcb.ca.gov]
Sent: Tuesday, April 10, 2001 2:06 PM
To: mark.redmond@asm.ca.gov; Saskia.Kim@asm.ca.gov
Cc: Newbill, Nancy; Andy Sawyer
Subject: RE: AB 946

Please let Andy or myself know asap if you will propose any other amendments for the bill.

Eric Feller
Legislative Analyst
State Water Resources Control Board
1001 I Street, 24th floor, Sacramento, CA 95814
ph. 916-341-5258 or 341-5251
fax. 916-341-5252
efeller@exec.swrcb.ca.gov

It is the province of knowledge to speak, and it is the privilege of wisdom to listen.

- Oliver Wendell Holmes, Sr.

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at: www.swrcb.ca.gov.

"Kim, Saskia" <Saskia.Kim@asm.ca.gov> 04/10/01 02:10PM >>>
Hi Andy,

Thanks for your email regarding AB 946. I am writing the analysis now and am finding your analysis to be very helpful. I also received your amendment language - it will be included in my analysis as technical amendments requested by the sponsor. Thanks for your help.

Saskia Kim
Counsel, Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814
(916) 319-2334
(916) 319-2188 (fax)
saskia.kim@asm.ca.gov

-----Original Message-----

From: Andy Sawyer [<mailto:ASawyer@exec.swrcb.ca.gov>]
Sent: Friday, April 06, 2001 10:51 AM
To: saskia.kim@asm.ca.gov
Cc: Eric Feller
Subject: AB 946

In response to your request, I am providing the following explanation of the provisions of AB 946 (2001-02 Reg. Sess.) that affect judicial review of administrative action. Please let me know if you would like any additional information.

AB 946 (Kelley), as introduced, includes two amendments to Water Code section 1126, which governs judicial review of State Water Resources Control Board (SWRCB) decisions and orders. One amendment would specify more clearly, without changing existing law, the rules governing

when the filing of a petition for reconsideration before the SWRCB is an administrative remedy that must be exhausted before seeking judicial review. The second amendment would make actions challenging SWRCB cease and desist orders subject to the same scope of judicial review as applies to all other SWRCB decisions and orders.

1. Exhaustion of Administrative Remedies

AB 946 would amend the language in subdivision (b) of section 1126 of the Water Code addressing the circumstances when the filing of a petition for reconsideration is a prerequisite to the filing of a lawsuit challenging an SWRCB decision or order. The relevant provisions of current law in subdivision (b) of section 1126 are intended to provide that the filing of a petition for reconsideration is an administrative remedy that must be exhausted before seeking judicial review if and only if the order or decision is made by staff, as opposed to an order or decision made by the board itself. The intent is to make sure that when a staff action may lead to a lawsuit, the board has an opportunity to review the staff action before it goes to court. Where the five-member board itself adopts an order or decision, however, a party should have the option of petitioning for reconsideration by the board or going straight to court. Thus, existing law specifies "the right to petition [for judicial review] is not affected" by a failure to petition for reconsideration "[u]nless reconsideration makes available a higher level of review."

At the time section 1126 was enacted, case law provided that the filing of a petition for reconsideration was an administrative remedy that must be exhausted before seeking judicial review, unless a statute provides otherwise. Section 1126 had the effect of allowing judicial review without first filing a petition for reconsideration, except in cases where an order is issued by staff. Later, the California Supreme Court reversed earlier precedent, holding that the filing of a petition for reconsideration is not required before seeking judicial review, unless a statute provides otherwise. (*Sierra Club v. San Joaquin LAFCO* (1999) 21 Cal.4th 489 [87 Cal.Rptr.2d 702, 981 P.2d 543].) Although the case involved a situation where the governing body itself, not staff, had made the decision, and the reasoning of the case focuses on the fact that reconsideration would be in front of the same body as made the original decision, the new rule may also be applied to staff decisions (unless there is a statute specifying otherwise). Because section 1126 was drafted against the backdrop of case law that has dramatically changed - a section drafted to create an exception to a rule requiring exhaustion now amounts to an exception from a rule excusing exhaustion—section 1126 is less clear than before. Also, some parties have expressed confusion about the meaning of the language in section 1126 "reconsideration makes available a higher level of review." Accordingly, AB 946 will help clarify the original meaning of subdivision (b) of section 1126 by rephrasing it to state that the filing of a petition for reconsideration is an administrative remedy that must be exhausted before seeking judicial review in cases where a board employee, as opposed to the board itself, adopts a decision or order.

2. Standard of Review for Cease and Desist Orders

AB 946 is intended to improve SWRCB enforcement by revising cumbersome administrative and judicial review procedures that have limited the SWRCB's ability to issue and enforce cease and desist orders. The amendment affecting judicial review would delete a provision in subdivision © of section 1126 of the Water Code that specifies that in all cases involving review of a cease and desist order the court shall apply the independent judgment test in determining whether the SWRCB's findings of fact are supported by the evidence. The effect of the amendment would be to subject cease and desist orders to the same scope of judicial review as applies to all other water right orders and decisions.

Under current law, the first sentence of subdivision © of Section 1126 of the Water Code, which would not be affected by AB 946, specifies that, except as otherwise provided in section 1126, judicial review shall be in accordance with section 1094.5 of the Code of Civil Procedure. Subdivision ©, of section 1094.5 of the Code of Civil Procedure, in turn, governs to test for determining whether the agency's findings are supported by the evidence. Either of two tests may apply: the independent judgment test, where the court reweighs the evidence and in effect makes its own findings of facts, or the substantial evidence test, where the court determines whether

there is sufficient evidence to support the agency's findings. Subdivision © of section 1094.5 of the Code of Civil Procedures does not spell out how a court determines which test applies. Instead it merely states that the independent judgment test applies where the court "is authorized by law" to apply it, effectively incorporating case law which establishes how it is determined which test applies. Whether the independent judgment test applies ordinarily is based on whether a fundamental vested right is involved. (See generally Cal. Administrative Mandamus (Cont.Ed.Bar. 2d ed. 1989 & Supp. 2000) §§ 4.127-4.166.) Water right orders and decisions may be subject to either the independent judgment test or the substantial evidence test, depending on the circumstances. (Compare Temescal Water Co. v. Department of Public Works (1955) 44 Cal.2d 90 [280 P.2d 1] [independent judgment] with Johnson Rancho County Water District v. State Water Rights Board (1965) 235 Cal.App.2d 863 [45 Cal.Rptr. 589] [substantial evidence].)

Under existing law, the second sentence of subdivision © of section 1126 provides for exercise of the independent judgment test in cases involving judicial review of a cease and desist order. In order to avoid any negative implication that by expressly specifying the independent judgment test for cease and desist orders the Legislature intended the substantial evidence test to apply to all other SWRCB decisions and orders, the second sentence of subdivision © reiterates the language in subdivision © of Section 1094.5, that the independent judgment test applies where the court "is authorized by law" to apply it. AB 946 would delete the provision making the independent judgment test applicable to all cases involving review of a cease and desist order. (Deleting that language, in turn, renders surplusage the rest of the second sentence of subdivision © of section 1126, as it merely duplicates the provision in subdivision © of Section 1094.5 of the Code of Civil Procedure for application of the independent judgment test where the court "is authorized by law" to do so.) The effect of deleting the second sentence of subdivision © of section 1126 is to make cases involving judicial review of cease and desist orders subject to the generally applicable rules for determining the scope of judicial review, which may involve either the independent judgment test or the substantial evidence test depending on the circumstances.

The California Law Review Commission has recommended elimination of the independent judgment, at least for state agency adjudications subject to adequate procedural safeguards. As the Law Revision Commission points out, California is the only jurisdiction in the United States that uses the independent judgment test, the constitutional basis on which the courts first developed the test has been repudiated, the test fails to give due deference to administrative agency expertise, is inefficient, and invites litigation. (California Law Revision Commission, Tentative Recommendation, Judicial Review of Agency Action (August 1995) pp. 9-10.) These considerations make it particularly inappropriate to have cease and desist orders subject to the independent judgment test, as it will delay effective enforcement of orders issued to bring violators back into compliance with water right requirements. Ideally, all cease and desist orders would be subject to the substantial evidence test. AB 946 does not go that far, however. It merely provides that the substantial evidence test will apply to review of cease and desist orders where the substantial evidence test applies under the generally applicable rules for judicial review of administrative action, and the independent judgment test shall apply in cases where that test applies under the generally applicable rules.

Andrew H. Sawyer
Assistant Chief Counsel
California State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
phone: (916) 341-5191
fax: (916) 341-5199
e-mail: asawyer@exec.swrcb.ca.gov

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AB 946 (KELLEY)
WATER RIGHTS.

Version: 2/23/01 As Proposed to be Amended
Vote: Majority
Support if Amended

Vice-Chair: Robert Pacheco
Tax or Fee Increase: No

A bill mainly intended to streamline board authorities, but would also expand their authority to issue cease and desist orders for 'threatened violations' and impose civil penalties for a violation of the order even if it did not result in a violaton of the Water Code. Maintains differing processes for the notice of violators by the board and differing timelines for requesting certain hearings that may lead the regulated community to not fully understand their rights.

Proposed Amendments: See # 2 and #3 under "Comments" Section of the Analysis.

Policy Question

1. Should an aggrieved party be able to file a writ of mandate for review of a decision or order before reconsideration by the SWRCB is complete?
2. Should changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse be excepted from review and approval by the board?
3. Should the board be able to cancel a protest or petition for water rights for failure to provide information requested by the board?
4. Should the board, after a hearing (except in limited circumstances), be able to approve with conditions, or deny a water rights petition?
5. Should the authority of the board to issue a cease and desist order be extended to threatened unauthorized diversions or violations of permits?
6. Should the board be provided extended authority to impose civil penalties for violations of a cease and desist order?

Summary

Allows an aggrieved party to file a writ of mandate for review of a decision or order before final reconsideration by the board in circumstances where the decision or order is issued under authority delegated to an officer or employee of the board. This bill also: (1) Exempts the need to seek board approval for changes in the point of discharge, place of use, or purpose of use of treated wastewater that does not result in decreasing the flow in any portion of a watercourse; (2) Provides the board with the authority to request additional information from a petitioner or protestor of a water rights petition and allows the board to cancel a protest or petition for failure to provide adequate information (except that a protest may not be cancelled for failure to provide information that is not in the control or possession of the protestor); (3) Requires the protestor and petitioner to make a good faith effort to resolve the protest not later than 180 days from the final date a protest may be filed; (4) Allows the board, after hearing, to approve with conditions, or deny a petition; (5) Clarifies that the board is not required to hold a hearing prior to approving a petition if the petition is not protested, or if the board determines that undisputed facts support the approval of the petition and no disputed issue is of material fact; (6) Provides that the board may deny a petition without hearing 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; (7) Adds to Legislative intent that the state should take vigorous action to enforce the terms and conditions of certifications and registrations to appropriate water and to enforce board orders and decisions to prevent the unlawful diversion of water; (8) Provides that the board may issue a cease and desist order for a violation or threatened violation of the prohibition against unauthorized diversion or use of water, or of any term or condition of a permit, license, certification, or

Assembly Republican Water Votes (11-2) 4/3/01

Ayes: Kelley, Leslie
Noes: Dickerson, Wyman
Abs. / NV: Aanestad, Hollingsworth

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs. / NV: None

registration, or of any order or decision by the board or the public trust doctrine; and (9) Provides that the board may administratively impose civil liabilities for a violation of a cease and desist order.

Support

State Water Resources Control Board

Opposition

None on file

Arguments In Support of the Bill

1. Applies the current provisions concerning water right applications to water right petitions. The bill that added the provisions to water right applications was unanimously passed in 1997.
2. Adds additional legal instruments issued by the board to the instruments that should be vigorously enforced, according to legislative intent.
3. Limits the need to seek approval from the board for changes to wastewater discharges or use to only situations that decrease the flow in any portion of a watercourse.
4. Simplifies and expands the board's ability to issue cease and desist orders and allows the board to issue them in additional circumstances of threatened violations.
5. Extends to the board the authority to administratively levy civil fines for violations of a cease and desist order.

Arguments In Opposition to the Bill

1. The board should not be able to issue a cease and desist order when no actual violation has occurred and then impose civil penalties for a violation of the order. This may result in civil penalties being imposed when no violation of the referenced statutes actually occurred.
2. Increases the civil liability for unauthorized diversion from \$500 per day to \$1,000 per day if it also involves the violation of a cease and desist order.
3. Maintains differing timeline requirements for an alleged violator to request a hearing depending on if the violator is responding to a civil penalty hearing or cease and desist order hearing and provides for different notification processes by the board. This may lead to confusion among the regulated community in their understanding of their rights.
4. If the so-called clarification of reconsideration is interpreted to require additional review by the board, then could such review unnecessarily drag out disputes with entities who would otherwise seek to move on to the courts?
5. To the entities subject to and disputing cease and desist orders they may otherwise prefer the courts to retain the right to exercise such independent judgment, notwithstanding more time and cost of such judicial review.

Fiscal Effect

Unknown.

Comments

1. The author references the State Water Resources Control Board as the sponsor. The board provides the following background: (1) SB 849 (Kelley) (chapter 323, statutes of 1997) authorized the SWRCB to take action to expedite water right application processing, among other provisions. The bill passed without any votes in opposition. This measure would extend those same procedures to water right petitions. (2) The provisions on cease and desist orders and changes in point of discharge of treated wastewater were enacted in 1980 (chapter 933, statutes of 1980) to implement the recommendations of the Governor's Commission to Review California Water Rights Law, Final Report 1978. The commission was chaired by former Chief Justice Donald Wright and included leading authorities on water rights.
2. The following amendments will assist in clarifying the code and establish more consistent timelines for hearing requests. It will also eliminate the ability of the board to issue a cease and desist order when no violation has occurred. The board would retain the ability to seek a preliminary injunction through a court of law and have expanded ability to administratively impose civil penalties for violations of a cease and desist order where an actual violation occurred.
3. **RECOMMENDED AMENDMENTS TO THE 2/23/01 VERSION (NOT INCLUDED IN THE PROPOSED AMENDMENTS TO BE ADOPTED ON 4/16/01):** (1) Page 9, Line 21, SEC. 17. Section 1831 of the Water Code is amended to read: "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 such violation. (b) The cease and desist order shall require such 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 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 order or decision of the board issued under this part, Section 275, Part 1 (commencing with Section 1000) of this division, Part 2 (commencing with Section 10500) of Division 6; Article 7 (commencing with Section 13550)

of Chapter 7 of Division 7, or the public trust doctrine.”; (2) Page 10, Line 22, SEC. 20. Section 1834 of the Water Code is amended to read: “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 to the person allegedly engaged in the violation ...”; and (3) Page 9, Line 16, SEC. 16. Section 1825 of the Water Code is amended to read: 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. *It is the intent of the Legislature that the state exercise appropriate restraint, where discretion is provided, in the imposition of monetary penalties against unknowing violators.* This last amendment, (3), moderates the overall intent language that water laws should be vigorously enforced, to also emphasize and clarify that the Legislature does not intend to provide the board an unmitigated excuse to impose financial penalties.

4. **TECHNICAL AMENDMENTS TO THE 4/16/01 VERSION SOUGHT BY THE AUTHOR & SPONSOR.** The author’s office has provided two technical amendments: (1) to add “or entity” to Water Code Sections 1055, 1055.2, 1122 (this latter section added as SEC.3

to the bill for this revision); and (2) Add the following clarifying language (italicized language) pertaining to time for filing a petition for writ of mandate under Water Code Section 1126: “The time for filing the petition for writ of mandate *and the time for filing an action or proceeding against the board 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 provisions of AB 946 of the 2001-02 Regular Session amending this subdivision are declaratory of existing law.*” The first series of amendments adding “or entity” addresses a concern for retaining consistency in application of administrative procedure. The definition of “person” in those affected sections could otherwise be applied too narrowly and subject some entities holding or claiming water rights to different administrative procedures. (However, this could raise the question of whether this broaden-application to cover such entities would place more regulatory onus on them then if not so included). The second amendment addresses concerns of parties seeking to avoid dismissal of actions under the California Environmental Quality Act (CEQA) beyond the deadline of the statute of limitations brought against the SWRCB.

Policy Consultant: Greg Hurner/Mark Redmond 4/12/01

Fiscal Consultant:



✓
April 13, 2001

Honorable David G. Kelley
Member, California Assembly
State Capitol, Room 4162
Sacramento, California 95814

RECEIVED
APR 15 2001
CAPITOL OFFICE

RE: Assembly Bill No. 946 – Oppose

Dear Assembly Member Kelley:

I am writing on behalf of the Association of California Water Agencies (ACWA) to express opposition to AB 946, relating to water rights. We are committed to meeting with you and the sponsor to address our concerns and we will not engage the bill while it remains in the Assembly to allow discussions to occur.

The sponsor's stated goals for AB 946 are to correct deficiencies in the State Water Resources Control Board's (SWRCB's) water rights cease and desist authority, improve water right petition processing and to clarify that Water Code Section 1211 only applies to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse. ACWA does not agree that the provisions of the bill simply correct deficiencies, rather the provisions greatly expand the grounds upon which SWRCB may issue cease and desist orders (CDO) or impose administrative civil liability (ACL). The provisions addressing the petition process may result in additional burdens on the petitioner seeking to obtain information from the Department of Fish and Game.

The amendments to Water Code Section 1055(a) and 1055.2 would authorize the executive director to issue a complaint to any person against whom an ACL may be imposed under Section 1845. The problem with the provision is that it allows SWRCB staff to issue a complaint based on any grounds upon which a CDO could be issued (see amended Section 1831) without any prior action by, or approval from the SWRCB.

Section 1126 would be amended to eliminate the reviewing court's ability to use its independent judgment in the review of cases involving the board's cease and desist orders. ACWA contends this amendment is unwarranted and ill-conceived, in light of the broad authority provided to SWRCB to issue cease and desist orders under amended Section 1831. Because, under amended Section 1831 (which will be addressed below in detail), the decisions and orders of the board have the force of law, it is particularly important that maximum judicial review is given to those decisions and orders involving the interpretations of the constitutionally and judicially created reasonable use and public trust doctrines.

Association of California
Water Agencies
910 K Street, Suite 100
Sacramento, California
95814-3512

916/441-4545
FAX 916/325-4849
www.acwanet.com

Hall of the States
400 N. Capitol St., N.W.
Suite 357 South
Washington, D.C.
20001-1512

202/434-4760
FAX 202/434-4763

The proposed new provisions regarding change petitions give too much authority to SWRCB. While giving the board the authority to request additional information from which to make an informed decision, the language could result in unintended consequences. One example is the additional burden on the change petitioner in obtaining information from the Department of Fish and Game regarding how the change might affect fish and wildlife resources, prior to filing the change petition, possibly resulting in delays in water transfers and change approval. Another example is the apparent authority given to the board to consider environmental impacts, the public trust and public interests in approving changes, where there is no express statutory provision in the Water Code for SWRCB to consider these factors. Under current board policy, participation is not limited to the petitioner and protestant, whereas, the new provisions would allow for diminished participation by parties that are neither the petitioner nor protestant.

Finally, the provisions give broad authority to the board to use its discretion in deciding to hold or not hold hearings for both contested and uncontested petitions for change. The first clause in Paragraph (1) of Subdivision (c) of Section 1704 permits the board to hold a hearing when there is an uncontested petition. If the petition is uncontested, what reason is there to have a hearing? Is the board then a party to the proceeding? In the second clause, the board can decide not to hold a hearing if the undisputed facts support approval of the petition and the disputed facts are deemed not to be material. However, there is no definition of what constitutes material facts in this instance. Where there are protests, the board should hold hearings and Water Code Section 1704 should continue without amendment or addition.

ACWA also has problems with the cease and desist language in the bill. These provisions greatly expand the grounds upon which SWRCB may issue cease and desist orders or administrative civil liability as they pertain to water rights matters. Current policy encourages vigorous action to “enforce the terms and conditions of existing *permits and licenses to appropriate water and to prevent the unlawful diversion of water.*” Unfortunately, the amendments to Section 1825 go beyond good policy and encourage the board to take vigorous action to enforce not only permit and license terms and conditions, but “to enforce state board orders and decisions.”

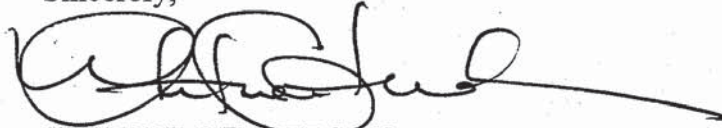
Amended Section 1831(a) would authorize the board to issue CDOs upon the determination that any person is violating or threatening to violate any requirement described in Subdivision (d). A plain reading of this provision allows the board to issue a CDO based on the board’s or the executive director’s view of a “violation or threatened violation” of any policy or legal conclusion arising out of any board order or decision regardless of whether the alleged violator was a party to the earlier board proceeding in which the order or decision was issued. Because there is no express limitation as to whom the board may issue a CDO, it is arguable that the board could apply the legal and policy interpretations adopted in prior orders and decisions to CDOs involving water or water rights to which SWRCB has no permitting authority, i.e., pre-1914 appropriative rights, riparian rights and groundwater.

Honorable David G. Kelley
April 13, 2001
Page 3

The problem here is that SWRCB would be encouraged and allowed to use administrative precedent to circumvent important protections provided by the California Administrative Procedures Act (APA) and the state and federal due process clauses. AB 946 allows SWRCB to proactively use policy and legal interpretations and conclusions made in a single administrative proceeding and apply them to water users and right holders when a CDO is issued.

For all of the above reasons, ACWA is opposed to AB 946 as introduced. We look forward to meeting with you and state board representatives to resolve our differences with the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Whitnie Henderson", with a long horizontal flourish extending to the right.

WHITNIE HENDERSON
Legislative Advocate

WH:

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 946

Introduced by Assembly Member Kelley

February 23, 2001

An act to amend Sections 1055, 1055.2, 1126, 1211, 1704, 1825, 1831, 1832, 1834, 1845, and 1850 of, to add Sections 1701.1, 1701.2, 1701.3, 1701.4, 1703.1, 1703.2, 1703.3, 1703.4, 1703.5, and 1703.6 to, and to repeal Section 1833 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as amended, Kelley. Water rights.

(1) Existing law authorizes any person aggrieved by any decision or order of the State Water Resources Control Board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate. The bill would delete the provision relating to the exercise of independent judgment by a court.

(2) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement 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.

(3) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the petition and would impose requirements in connection with the filing of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

(4) Existing law authorizes the board to issue a preliminary cease and desist order to any person holding a permit or license to appropriate water if the board determines that that person is violating a term or condition of that permit or license and provides for the issue of a final cease and desist order. Existing law requires the Attorney General, if so requested by the board and upon the failure of any person to comply with a final cease and desist order, to petition the superior court for the issuance of specified relief.

This bill would delete references to a preliminary or final cease and desist order and, instead, would authorize the board to issue a cease and desist order to any person who the board determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the board, or prescribed orders or decisions of the board. *The bill would require the board, prior to adopting a cease and*

desist order, to give prescribed notice by personal notice or certified mail to the person allegedly engaged in the violation.

The bill would specify that civil liability may be imposed by the superior court, and would authorize the board to impose that liability administratively, on any person who violates a cease and desist order.

(5) Existing law makes a statement of legislative intent regarding the need for the state to take action to enforce the terms and conditions of permits and licenses to appropriate water.

This bill, in addition, would declare that it is the intent of the Legislature that the state take action to enforce certifications and registrations to appropriate water and to enforce the orders and decisions of the board.

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

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

1 SECTION 1. Section 1055 of the Water Code is amended to
2 read:

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

10 (b) The complaint shall be served by personal notice or
11 certified mail, and shall inform the party so served that the party
12 may request a hearing within 20 days after the party has been
13 served. The hearing shall be before a member of the board as it may
14 specify.

15 (c) After any hearing, the member shall report a proposed
16 decision and order to the board and shall supply a copy to the party
17 served with the complaint, the board's executive director, and any
18 other person requesting a copy. The member of the board acting
19 as hearing officer may sit as a member of the board in deciding the
20 matter. The board, after making an independent review of the
21 record and taking any additional evidence as may be necessary and
22 could not reasonably have been offered before the hearing officer,

1 may adopt, with or without revision, the proposed decision and
2 order.

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

6 SEC. 2. Section 1055.2 of the Water Code is amended to read:
7 1055.2. No person shall be subject to both civil liability
8 imposed under Section 1055 and civil liability imposed by the
9 superior court under subdivision (d) of Section 1052 or Section
10 1845 for the same act or failure to act.

11 SEC. 3. Section 1126 of the Water Code is amended to read:
12 1126. (a) It is the intent of the Legislature that all issues
13 relating to state water law decided by the board be reviewed in state
14 courts, if a party seeks judicial review. It is further the intent of the
15 Legislature that the courts assert jurisdiction and exercise
16 discretion to fashion appropriate remedies pursuant to Section 389
17 of the Code of Civil Procedure to facilitate the resolution of state
18 water rights issues in state courts.

19 (b) Any party aggrieved by any decision or order may, not later
20 than 30 days from the date of final action by the board, file a
21 petition for a writ of mandate for review of the decision or order.
22 Except in cases where the decision or order is issued under
23 authority delegated to an officer or employee of the board,
24 reconsideration before the board is not an administrative remedy
25 that is required to be exhausted before filing a petition for writ of
26 mandate. The time for filing the petition for writ of mandate shall
27 be extended for any person who seeks reconsideration by the board
28 pursuant to this article.

29 (c) Except as otherwise provided in this section, Section 1094.5
30 of the Code of Civil Procedure shall govern the judicial
31 proceedings.

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

35 (e) In any court case reviewing a decision or order by the state
36 board relating to a permit or license to appropriate water held by
37 the state through the department or any other state agency, or to a
38 permit or license to appropriate water held by the United States
39 through the Bureau of Reclamation or any other federal agency,
40 the election by the United States, or any agency thereof, not to be

1 a party shall not, in and of itself, be the basis for dismissal pursuant
2 to Section 389 of the Code of Civil Procedure or any other
3 provision of law.

4 SEC. 4. Section 1211 of the Water Code is amended to read:

5 1211. (a) Prior to making any change in the point of
6 discharge, place of use, or purpose of use of treated wastewater, the
7 owner of any wastewater treatment plant shall obtain approval of
8 the board for that change. The board shall review such changes
9 pursuant to the provisions of Chapter 10 (commencing with
10 Section 1700) of Part 2 of Division 2.

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

14 SEC. 5. Section 1701.1 is added to the Water Code, to read:

15 1701.1. A petition for change filed after notice of an
16 application shall meet all of the following requirements:

17 (a) State the name and address of the petitioner.

18 (b) Be signed by the petitioner, or the petitioner's agent or
19 attorney.

20 (c) Set forth amendments to the application or an amended
21 application reflecting the proposed change, including any
22 information necessary for the amended application to comply with
23 Section 1260.

24 (d) Include sufficient information to demonstrate a reasonable
25 likelihood that the proposed change will not injure any other legal
26 user of water.

27 (e) Contain other appropriate information and be in the form
28 required by applicable regulations.

29 SEC. 6. Section 1701.2 is added to the Water Code, to read:

30 1701.2. A petition for change in a permit or license shall meet
31 all of the following requirements:

32 (a) State the name and address of the petitioner.

33 (b) Be signed by the petitioner, or the petitioner's agent or
34 attorney.

35 (c) Include all information reasonably available to the
36 petitioner, or that can be obtained from the Department of Fish and
37 Game, concerning the extent, if any, to which fish and wildlife
38 would be affected by the change, and a statement of any measures
39 proposed to be taken for the protection of fish and wildlife in
40 connection with the change.

1 (d) Include sufficient information to demonstrate a reasonable
2 likelihood that the proposed change will not injure any other legal
3 user of water.

4 (e) Contain other appropriate information and be in the form
5 required by applicable regulations.

6 SEC. 7. Section 1701.3 is added to the Water Code, to read:

7 1701.3. (a) After a petition is filed, the board may request
8 additional information reasonably necessary to clarify, amplify,
9 correct, or otherwise supplement the information required to be
10 submitted under this article. The board shall provide a reasonable
11 period for submitting the information.

12 (b) The additional information may include, but is not limited
13 to, any of the following:

14 (1) Information needed to demonstrate that the change will not
15 injure any other legal user of water.

16 (2) Information needed to comply, or demonstrate compliance
17 with, any applicable requirements of the Fish and Game Code or
18 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
19 et seq.).

20 (3) Information needed to comply with Division 13
21 (commencing with Section 21000) of the Public Resources Code.

22 SEC. 8. Section 1701.4 is added to the Water Code, to read:

23 1701.4. If, within the period provided, the petitioner does not
24 provide the information requested pursuant to Section 1701.3, the
25 board shall cancel the petition, unless, for good cause shown, the
26 board allows additional time in which to submit the requested
27 information.

28 SEC. 9. Section 1703.1 is added to the Water Code, to read:

29 1703.1. Any interested person, within the time allowed in the
30 notice of petition, or within the time the board may allow for good
31 cause shown, may file with the board a written protest against
32 approval of the petition.

33 SEC. 10. Section 1703.2 is added to the Water Code, to read:

34 1703.2. The protest shall meet all of the following
35 requirements:

36 (a) State the name and address of the protestant.

37 (b) Be signed by the protestant, or the protestant's agent or
38 attorney.

1 (c) Clearly and specifically set forth the protestant's objections
2 to the approval of the petition, and state the bases for these
3 objections.

4 (d) Contain other appropriate information and be in the form
5 required by applicable regulations.

6 (e) Be served on the petitioner by the protestant by mailing a
7 duplicate copy of the protest to the petitioner or through service
8 undertaken in another manner determined to be adequate by the
9 board.

10 SEC. 11. Section 1703.3 is added to the Water Code, to read:

11 1703.3. The board may request from the protestant additional
12 information reasonably necessary to clarify, amplify, correct, or
13 otherwise supplement the information required to be submitted
14 pursuant to Section 1703.2. The board shall provide a reasonable
15 period for submitting the information, and may allow additional
16 time for good cause shown.

17 SEC. 12. Section 1703.4 is added to the Water Code, to read:

18 1703.4. The protestant and the petitioner shall make a good
19 faith effort to resolve the protest not later than 180 days from the
20 date on which the period provided pursuant to Section 1330
21 expires. For good cause, the board may allow additional time for
22 the protestant and the applicant to attempt to resolve the protest.

23 SEC. 13. Section 1703.5 is added to the Water Code, to read:

24 1703.5. The board may request from the protestant or the
25 petitioner additional information that the board determines is
26 reasonably necessary to attempt to resolve the protest. The board
27 shall provide a reasonable period for submitting the information,
28 and may allow additional time for good cause shown.

29 SEC. 14. Section 1703.6 is added to the Water Code, to
30 read:

31 1703.6. (a) The board may cancel a protest or petition for
32 failure to provide information requested by the board under this
33 article within the period provided.

34 (b) Except as provided in subdivisions (c) and (d), a protest
35 shall not be canceled for failure to submit information not in the
36 possession or under the control of the protestant if the protest
37 meets the requirements of Section 1703.2 and the petitioner is or
38 could be required to submit the information under Section 1701.1,
39 1701.2, and 1701.3.

1 (c) Subject to subdivision (d), if a protest is based on injury to
2 a legal user of water, the board may cancel the protest if the
3 protestant fails to submit any of the following information
4 requested by the board:

5 (1) Information that the protestant is required to submit to the
6 board to comply with Part 5.1 (commencing with Section 5100)
7 during any period after the protest is filed.

8 (2) Information that is reasonably necessary to determine if the
9 protestant has a valid water right.

10 (3) Information concerning the protestant's historical, current,
11 or proposed future diversion and use of water that is reasonably
12 necessary to determine if the proposed appropriation will result in
13 injury to the protestant's exercise of its water right.

14 (d) If the protest is based on an allegation that the proposed
15 change would not be in the public interest, would adversely affect
16 public trust uses, or would have adverse environmental impact, the
17 board may cancel the protest for failure to submit information
18 requested by the board if the board determines both of the
19 following:

20 (1) The public review period has expired for any draft
21 environmental document or negative declaration required to be
22 circulated for public review and comment pursuant to Division 13
23 (commencing with Section 21000) of the Public Resources Code.

24 (2) In the absence of the requested information, there is no
25 substantial evidence in light of the whole record to support the
26 allegation.

27 SEC. 15. Section 1704 of the Water Code is amended to read:

28 1704. (a) The board, after a hearing, may approve with
29 conditions, or deny, a petition.

30 (b) Notice of hearing shall be given by mailing the notice not
31 less than 20 days before the date of hearing to the petitioner and
32 to any protestant by registered mail.

33 (c) (1) The board may, but is not required to, hold a hearing
34 prior to approving an unprotested petition, or if the board
35 determines that undisputed facts support the approval of the
36 petition and there is no disputed issue of material fact.

37 (2) The board may, but is not required to, hold a hearing prior
38 to denying a petition, if, after notice, the board determines that the
39 petition is defective, the petition fails to provide information

1 requested by the board, or undisputed facts support the denial of
2 the petition and there is no disputed issue of material fact.

3 SEC. 16. Section 1825 of the Water Code is amended to read:

4 1825. It is the intent of the Legislature that the state should
5 take vigorous action to enforce the terms and conditions of
6 permits, licenses, certifications and registrations to appropriate
7 water, to enforce state board orders and decisions, and to prevent
8 the unlawful diversion of water.

9 SEC. 17. Section 1831 of the Water Code is amended to read:

10 1831. (a) When the board determines that any person is
11 violating, or threatening to violate, any requirement described in
12 subdivision (d), the board may issue an order to that person to
13 cease and desist from such violation.

14 (b) The cease and desist order shall require such person to
15 comply forthwith or in accordance with a time schedule set by the
16 board.

17 (c) The board may issue a cease and desist order only after
18 notice and an opportunity for hearing pursuant to Section 1834.

19 (d) The board may issue a cease and desist order in response to
20 a violation or threatened violation of any of the following:

21 (1) The prohibition set forth in Section 1052 against
22 unauthorized diversion or use of water subject to this division.

23 (2) Any term or condition of a permit, license, certification, or
24 registration issued under this division.

25 (3) Any order or decision of the board issued under this part,
26 Section 275, Part 1 (commencing with Section 1000) of this
27 division, Part 2 (commencing with Section 10500) of Division 6;
28 Article 7 (commencing with Section 13550) of Chapter 7 of
29 Division 7, or the public trust doctrine.

30 SEC. 18. Section 1832 of the Water Code is amended to read:

31 1832. Cease and desist orders of the board shall be effective
32 upon the issuance thereof. The board may, after notice and
33 opportunity for hearing, upon its own motion or upon receipt of an
34 application from an aggrieved person, modify, revoke, or stay in
35 whole or in part any cease and desist order issued pursuant to this
36 chapter.

37 SEC. 19. Section 1833 of the Water Code is repealed.

38 SEC. 20. Section 1834 of the Water Code is amended to read:

39 1834. (a) In the event that a violation of a requirement
40 described in subdivision (d) of Section 1831 is occurring or

1 threatening to occur, the board shall give notice ~~in writing~~ by
2 *personal notice or certified mail, pursuant to which the party shall*
3 *be informed that he or she may request a hearing not later than 20*
4 *days from the date on which the notice is received,* to the person
5 allegedly engaged in the violation. The notice shall contain a
6 statement of facts and information that would tend to show the
7 proscribed action, and notification of the requirements of
8 subdivision (b).

9 (b) Unless a written request for a hearing signed by or on behalf
10 of the notified party is delivered to or received by mail by the board
11 within ~~15~~ 20 days after receipt of the notice, the board may adopt
12 a cease and desist order, based on the statement of facts and
13 information set forth in the notice, without a hearing.

14 SEC. 21. Section 1845 of the Water Code is amended to read:

15 1845. (a) Upon the failure of any person to comply with a cease
16 and desist order issued by the board pursuant to this chapter, the
17 Attorney General, upon the request of the board, shall petition the
18 superior court for the issuance of prohibitory or mandatory
19 injunctive relief as appropriate, including a temporary restraining
20 order, preliminary injunction, or permanent injunction.

21 (b) (1) Any person or entity who violates a cease and desist
22 order issued pursuant to this chapter may be liable for a sum not
23 to exceed one thousand dollars (\$1,000) for each day in which the
24 violation occurs.

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

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

30 (c) In determining the appropriate amount, the court, or the
31 board, as the case may be, shall take into consideration all relevant
32 circumstances, including, but not limited to, the extent of harm
33 caused by the violation, the nature and persistence of the violation,
34 the length of time over which the violation occurs, and the
35 corrective action, if any, taken by the violator.

36 (d) All funds recovered pursuant to this section shall be
37 transferred to the General Fund of the state.

38 SEC. 22. Section 1850 of the Water Code is amended to read:

39 1850. Any factual or legal determinations made pursuant to a
40 cease and desist order shall be conclusive and shall preclude any

- 1 party to the order from raising such issues in any subsequent
- 2 administrative proceeding.

O

3-13-01

RECEIVED

ASSEMBLY JUDICIARY COMMITTEE'S BACKGROUND

MAR 13 2001

CAPITOL OFFICE

INFORMATION WORKSHEET

KELLEY

Measure: AB-946 Author: [REDACTED]

- 1. Who is the source of the bill? Are they the sponsor? What person, organization, or governmental entity requested introduction?
STATE WATER RESOURCES CONTROL BOARD
Eric Feller, 341-5258
- 2. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number, summary of bill's contents, and disposition of the bill. (Use attachments if necessary)
SB 849 (Kelley) Chapter 323, Statutes of 1997. Authorized the SWRCB to take action to expedite water right application processing.
- 3. Have there been any interim hearings on the subject matter of the bill? If so, when?
NO
- 4. **Please attach a sheet explaining in detail the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolves the problem. Please also list all witnesses you plan to have testify.**
ERIC FELLER AND/OR ANDY SAWYER, BOTH WITH SWRCB WILL TESTIFY!!
- 5. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff which would be helpful to the analysis of the bill.
- 6. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.
- 7. If you plan substantive amendments to this bill prior to hearing, please attach a detailed explanation of the substance of the amendments to be prepared. **Please recall that all substantive amendments must be received by the committee in Legislative Counsel form the Tuesday prior to the committee hearing.**

STAFF PERSON TO CONTACT: Nancy Lucchesi Newbill PHONE#: 319-2442

IMPORTANT NOTE:

THIS FORM MUST BE FILLED OUT AND RETURNED NO LATER THAN 7 DAYS AFTER RECEIPT OR THE BILL MAY BE PUT OVER AS AN AUTHOR'S RESIST.

ASSEMBLY JUDICIARY COMMITTEE, 1020 N. STATE (LOB), ROOM 104

PLEASE PROVIDE 2 STAPLED COPIES OF THIS SHEET AND ALL OTHER SUPPORTING DOCUMENTATION INCLUDING LETTERS OF SUPPORT AND OPPOSITION.

please

SUMMARY:

This bill would correct deficiencies in the State Water Resources Control Board's (SWRCB's) water rights cease and desist order authority, improve water right petition processing, and clarify that Water Code § 1211 only applies to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.

BACKGROUND:

The SWRCB administers the state's water rights and water quality control programs. Effective enforcement is important to both programs, yet the state's water right enforcement program is less effective than for water quality control.

PROBLEM:

Water Rights Enforcement: Based on the recommendations of the Governor's Commission to Review California Water Right Law, the Legislature enacted a statute in 1980 authorizing the SWRCB to issue cease and desist orders for water right violations. Although the statute said the state should take vigorous enforcement action, there have been obstacles to making effective use of the authority to issue and enforce cease and desist orders including limitations on the kinds of violations for which a cease and desist order may be issued, complex procedures for issuance of orders, and the inability to impose administrative civil liability for violations.

Water-Right Petition Process: Existing law requires that before the SWRCB approves a change in a permitted or licensed water right, the SWRCB must find that the change will not result in injury to other legal users of water. But many petitioners fail to provide the information needed to make this finding, or provide inadequate information

concerning the environmental impacts of the proposed change. Similarly, some protestants fail to provide the information necessary to properly evaluate their protests. This makes the current water right petition process long and subject to delays due to inadequate information, and delays on the part of the petitioner or protestants.

Treated Waste Water Change: Water Code § 1211 currently requires the owner of any waste water treatment plant to obtain the approval of the SWRCB prior to making any change in the point of discharge, place of use, or purpose of use of treated waste water. While these procedures provide protection of third party water right holders and environmental interests that might be adversely affected by reduction in streamflows, they also require review of many water recycling projects that pose no threat of these adverse impacts because they do not reduce streamflows.

ANALYSIS:

AB 948 would:

- Apply the provisions of the Water Code concerning water right application processing that were added by Chapter 323, Statutes of 1997 (SB 848, Kelley) to water right petition processing. The bill would authorize the SWRCB to request supplemental information from a petitioner or protestant that is reasonably necessary to evaluate the petition or protest, including information needed to demonstrate water availability and to comply with environmental laws. If the petitioner or protestant does not provide the information, the petition or protest may be canceled.
- Provide that the treated waste water change petition in Water Code § 1211 (that requires the owner of a waste water treatment plant to obtain the approval of the SWRCB before making any change in the point of discharge, place of use, or purpose of use of treated waste water) applies only to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.
- Clarify procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.
- Authorize the SWRCB to issue a cease and desist order to any person who the SWRCB determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the SWRCB, or prescribed orders or decisions of the SWRCB. Additionally the bill would authorize the SWRCB to impose that liability administratively on any person who violates a cease and desist order.
- Declare legislative intent that the state take action to enforce certifications and registrations to appropriate water and to enforce SWRCB orders and decisions.

Newbill, Nancy

From: Eric Feller [EFeller@exec.swrcb.ca.gov]
Sent: Wednesday, March 14, 2001 11:54 AM
To: nancy.newbill@asm.ca.gov
Subject: additional legislative history for AB 946

BACKGROUND
Info

The provisions on cease and desist orders and changes in point of discharge of treated wastewater were enacted in 1980 (Chapter 933, Statutes of 1980) to implement recommendations of commission, chaired by former Chief Justice Donald Wright and including leading authorities on water rights, established to review and recommend changes in California water rights law. (Governor's Commission to Review California Water Rights Law, Final Report (1978)).

Eric Feller
Legislative Analyst
State Water Resources Control Board
1001 I Street, 24th floor, Sacramento, CA 95814
ph. 916-341-5258 or 341-5251
fax. 916-341-5252
efeller@exec.swrcb.ca.gov

It is the province of knowledge to speak, and it is the privilege of wisdom to listen.
-- Oliver Wendell Holmes, Sr.

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at: www.swrcb.ca.gov.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Date of Hearing: April 17, 2001

ASSEMBLY COMMITTEE ON JUDICIARY
Darrell Steinberg, Chair
AB 946 (Kelley) – As Amended: April 16, 2001

SUBJECT: WATER RIGHTS: CEASE AND DESIST ORDERS

KEY ISSUES:

- 1) SHOULD THE LAW BE CLARIFIED TO PROVIDE THAT A PERSON FILING A COURT CHALLENGE TO A DECISION BY THE STATE WATER RESOURCES CONTROL BOARD (SWRCB) NEED NOT EXHAUST ADMINISTRATIVE REMEDIES, EXCEPT IN SPECIFIED INSTANCES?
- 2) SHOULD THE STANDARD OF REVIEW USED BY A COURT IN REVIEWING A CEASE AND DESIST ORDER ISSUED BY THE SWRCB BE MODIFIED TO SUBJECT SUCH ORDERS TO THE SAME SCOPE OF JUDICIAL REVIEW AS APPLIES TO ALL OTHER WATER RIGHT ORDERS AND DECISIONS?

SYNOPSIS

This Bill Seeks To Correct Deficiencies In The SWRCB's Water Rights Cease And Desist Order Authority And Thus Improve Enforcement By The Board. This Bill Clarifies The Law Regarding Exhaustion Of Administrative Remedies, Modifies The Standard Of Review Used When A Cease And Desist Order Issued By The SWRCB Is Reviewed By A Court, And Provides That Civil Liability May Be Imposed For Violations Of A Cease And Desist Order By A Superior Court And The SWRCB. The Author Has Requested Technical Amendments To The Bill Which Are Noted In The Analysis.

SUMMARY: Makes changes to the State Water Resources Control Board's (SWRCB) authority to issue licenses and permits for appropriation of water and to enforce the terms of those licenses and permits. Specifically, this bill:

- 1) Provides that a person filing a court challenge to a decision or order of the SWRCB does not have to exhaust the administrative remedy of reconsideration by the board, except where the decision or order was made under authority delegated by the board to an officer or employee of the board.
- 2) Modifies the standard of review used by a court in reviewing a cease and desist order issued by the SWRCB.
- 3) Authorizes SWRCB to issue a cease and desist order to prevent unauthorized diversion or use of water or violation of a term of a permit or license.
- 4) Provides that civil liability for violation of a cease and desist order may be imposed by the superior court and by the SWRCB.

EXISTING LAW:

- 1) Requires parties challenging a decision of the SWRCB to file a petition for a writ of mandate for review of the board's decision. (Water Code section 1126. All further references are to this code unless otherwise noted.)
- 2) Requires a court in reviewing a cease and desist order issued by the SWRCB to exercise its independent judgment on the evidence. (Section 1126.)
- 3) Provides for two alternate standards to be used in reviewing administrative orders based on evidentiary hearings. Under the "independent judgement" standard, in cases in which a court is authorized to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. Under the "substantial evidence" standard, which applies to all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record. (Code of Civil Procedure section 1094.5.)
- 4) Provides that when the SWRCB determines that any person holding a permit or license to appropriate water is violating a term or condition of the permit or license, the board may issue a preliminary cease and desist order. (Section 1831.)
- 5) Requires the Attorney General to petition the court for injunctive relief against violators of cease and desist orders upon request by the SWRCB, imposes fines on such violators, and permits the Attorney General to petition the superior court to assess and recover those sums. (Section 1845.)

FISCAL EFFECT: The bill as currently in print is keyed fiscal.

COMMENTS: This measure was heard by the Water, Parks and Wildlife Committee on April 3, 2001 which approved the bill by a vote of 11-3. This analysis focuses on those provisions that come under the jurisdiction of this Committee, including provisions concerning exhaustion of administrative remedies, the standard of review to be used in reviewing administrative orders based on evidentiary hearings, and imposition of civil liability on violators of cease and desist orders. In commenting on the need for the measure, the author states:

Based on the recommendations of the Governor's Commission to Review California Water Right Law, the Legislature enacted a statute in 1980 authorizing the SWRCB to issue cease and desist orders for water right violations. Although the statute said the state should take vigorous enforcement action, there have been obstacles to making effective use of the authority to issue and enforce cease and desist orders including limitations on the kinds of violations for which a cease and desist order may be issued, complex procedures for issuance of orders, and the inability to impose administrative civil liability for violations.

In support of the bill's provision specifying more clearly, without changing existing law, the rules governing when the filing of a petition for reconsideration before the SWRCB is an administrative remedy that must be exhausted before seeking judicial review, the sponsor states:

AB 946 would amend the language in subdivision (b) of section 1126 of the Water Code addressing the circumstances when the filing of a petition for reconsideration is a prerequisite to the filing of a lawsuit challenging an SWRCB decision or order. [Current law is] intended to provide that the filing of a petition for reconsideration is an administrative remedy that must be exhausted before seeking judicial review if and only if the order or decision is made by staff, as opposed to an order or decision made by the board itself. The intent is to make sure that when a staff action may lead to a lawsuit, the board has an opportunity to review the staff action before it goes to court. Where the five-member board itself adopts an order or decision, however, a party should have the option of petitioning for reconsideration by the board or going straight to court. Thus, existing law specifies "the right to petition [for judicial review] is not affected" by a failure to petition for reconsideration "[u]nless reconsideration makes available a higher level of review."

... Because section 1126 was drafted against the backdrop of case law that has dramatically changed ..., section 1126 is less clear than before. Also, some parties have expressed confusion about the meaning of the language in section 1126 "reconsideration makes available a higher level of review." Accordingly, AB 946 will help clarify the original meaning of subdivision (b) of section 1126 by rephrasing it to state that the filing of a petition for reconsideration is an administrative remedy that must be exhausted before seeking judicial review in cases where a board employee, as opposed to the board itself, adopts a decision or order.

With respect to the bill's provision modifying the standard of review used by a court in reviewing a cease and desist order issued by the SWRCB, the sponsor states:

AB 946 is intended to improve SWRCB enforcement by revising cumbersome administrative and judicial review procedures that have limited the SWRCB's ability to issue and enforce cease and desist orders. The amendment affecting judicial review would delete a provision in subdivision (c) of section 1126 of the Water Code that specifies that in all cases involving review of a cease and desist order the court shall apply the independent judgment test in determining whether the SWRCB's findings of fact are supported by the evidence. The effect of the amendment would be to subject cease and desist orders to the same scope of judicial review as applies to all other water right orders and decisions. ... [AB 946] merely provides that the substantial evidence test will apply to review of cease and desist orders where the substantial evidence test applies under the generally applicable rules for judicial review of administrative action, and the independent judgment test shall apply in cases where that test applies under the generally applicable rules.

Technical Amendment #1. The author has requested that the bill be amended to address a concern that the Water Code defines "person" in a manner that may not include some entities such as state or federal agencies or some local districts. Because the administrative provisions in the Water Code currently apply to any "person," the sponsor is concerned that, if the definition of "person" is applied narrowly, some entities holding or claiming water rights would be subject to different administrative procedures than other persons (e.g., state and federal agencies would not be allowed to petition for reconsideration, which would be an illogical result). In order to address this concern, the author suggests adding the terms "or entity" after "person" in sections 1055, 1055.2 and 1122.

Technical Amendment #2. The author has also requested that the measure be amended to clarify that when the filing of a petition for reconsideration extends the statute of limitations for filing suit against the SWRCB, that extension encompasses causes of action based on the California Environmental Quality Act (CEQA). In explaining this request, the sponsor states that the "clarification would codify the SWRCB's interpretation of existing law. (SWRCB Order WR 2000-02 at p. 45.) Notwithstanding the SWRCB's interpretation, some parties file two lawsuits against a single SWRCB decision – one immediately after the decision based on CEQA and a second after the SWRCB acts on their petitions for reconsideration based on other causes of action. These parties claim that if they waited until the administrative process was complete before filing suit they would risk having their CEQA causes of action dismissed. Although their concerns appear to be unwarranted, their premature litigation imposes a burden on the SWRCB and the courts that may be avoided if the proposed clarifying amendments are adopted." In order to address this concern, the author wishes to amend the bill accordingly.

REGISTERED SUPPORT / OPPOSITION:

Support

State Water Resources Board (sponsor)
The Office of Governor Gray Davis

Opposition

None on file

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

Date of Hearing: April 24, 2001

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Dean Florez, Chair
AB 949 (Kehoe) – As Amended: April 18, 2001

SUBJECT: Natural Community Conservation Planning

SUMMARY: Authorizes Natural Community Conservation Plans (NCCP) to provide for the conservation of wetlands and wetlands-dependent species no longer receiving protection under the federal Clean Water Act (Act). Specifically, this bill:

- 1) Makes a finding that it is desirable to create incentives to conserve wetlands and wetlands-dependent plant and animal species.
- 2) Provides that a NCCP may provide for the conservation of wetlands and wetlands-dependent plant and animal species that may no longer be receiving protection under the federal Act if the Department of Fish and Game (DFG) finds all of the following:
 - a) The plan ensures no net loss of existing wetlands or recreational uses and provides a long-term gain in wetlands acreage and functions in the plan area.
 - b) The plan prohibits the destruction of wetlands if there is a practicable alternative with less impact to the environment.
 - c) The plan requires that adverse impacts to wetlands are avoided, minimized, or mitigated.
 - d) The plan meets the requirements of the Coastal Act if coastal wetlands are affected.
 - e) Any use of offsite mitigation or wetlands mitigation banks is close enough to the project site that the mitigation will actually replace of hydrological, vegetative, and wildlife functions and values of the wetlands on the project site.

EXISTING LAW: Provides for the regional or area-wide protection of wildlife habitats, while allowing compatible and appropriate development and growth, through the use of NCCP's.

FISCAL EFFECT: Unknown.

COMMENTS: State policy seeks to ensure "no net loss" of wetlands. Several state laws, including the Porter-Cologne Act, the California Endangered Species Act (CESA), and the California Environmental Quality Act (CEQA) may be used to protect wetlands. The federal Endangered Species Act (ESA) may also be used to protect habitat for endangered species. This bill is intended to extend the NCCP Act to protect wetlands values while accommodating needed economic activity. This bill creates standards for the use of the NCCP Act in conserving wetlands.

REGISTERED SUPPORT / OPPOSITION:

Support

National Audubon Society (sponsor)
Planning and Conservation League (PCL)

Opposition

None on file.

Analysis Prepared by: Jeff Volberg / W., P. & W. / (916) 319-2096

AMENDED IN ASSEMBLY APRIL 25, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 946

Introduced by Assembly Member Kelley

February 23, 2001

An act to amend Sections 1055, 1055.2, 1122, 1126, 1211, 1704, 1825, 1831, 1832, 1834, 1845, and 1850 of, to add Sections 1701.1, 1701.2, 1701.3, 1701.4, 1703.1, 1703.2, 1703.3, 1703.4, 1703.5, and 1703.6 to, and to repeal Section 1833 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as amended, Kelley. Water rights.

(1) *Existing law specifies procedures under which a person may be subject to administrative civil liability for unauthorized diversion or use of water. Existing law specifies procedures under which the State Water Resources Board may order a reconsideration of any of its decisions or orders on the filing of a petition for writ of mandate by any interested person.*

This bill would expand these procedures to apply to any person or entity.

(2) Existing law authorizes any ~~person~~ party aggrieved by any decision or order of the ~~State Water Resources Control Board~~ board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless reconsideration makes available a higher level of review of a decision or order issued

under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate. The bill would delete the provision relating to the exercise of independent judgment by a court.

~~(2)~~

(3) *Existing law requires that the time for filing the petition for a writ of mandate described in (2) above be extended for any person who seeks reconsideration of the decision or order of the board.*

Existing law, the California Environmental Quality Act (CEQA), requires that any action or proceeding to challenge certain acts or decisions of a public agency on the grounds of noncompliance with the act be commenced within certain time limits.

This bill would require that the time for filing any of these CEQA actions or proceedings against the board be extended for any person who seeks reconsideration of any decision or order of the board. This bill would provide that the amendment made by this bill, with respect to this provision, does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement 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.

~~(3)~~

(5) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding

the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the petition and would impose requirements in connection with the filing of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

~~(4)~~

(6) Existing law authorizes the board to issue a preliminary cease and desist order to any person holding a permit or license to appropriate water if the board determines that that person is violating a term or condition of that permit or license and provides for the issue of a final cease and desist order. Existing law requires the Attorney General, if so requested by the board and upon the failure of any person to comply with a final cease and desist order, to petition the superior court for the issuance of specified relief.

This bill would delete references to a preliminary or final cease and desist order and, instead, would authorize the board to issue a cease and desist order to any person who the board determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the board, or prescribed orders or decisions of the board. The bill would require the board, prior to adopting a cease and desist order, to give prescribed notice by personal notice or certified mail to the person allegedly engaged in the violation.

The bill would specify that civil liability may be imposed by the superior court, and would authorize the board to impose that liability administratively, on any person who violates a cease and desist order.

~~(5)~~

(7) Existing law makes a statement of legislative intent regarding the need for the state to take action to enforce the terms and conditions of permits and licenses to appropriate water.

This bill, ~~in addition,~~ would ~~declare that it is the intent of the Legislature that the state take action to enforce certifications and~~

~~registrations to appropriate water and to enforce the orders and decisions of the board~~ *revise that statement of legislative intent.*

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

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

1 SECTION 1. Section 1055 of the Water Code is amended to
2 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, Section 1845,
6 or Section 5107. The complaint shall allege the act or failure to act
7 that constitutes a trespass or violation, the provision of law
8 authorizing civil liability to be imposed, and the proposed civil
9 liability.

10 (b) The complaint shall be served by personal notice or
11 certified mail, and shall inform the party so served that the party
12 may request a hearing within 20 days after the party has been
13 served. The hearing shall be before a member of the board as it may
14 specify.

15 (c) After any hearing, the member shall report a proposed
16 decision and order to the board and shall supply a copy to the party
17 served with the complaint, the board's executive director, and any
18 other person requesting a copy. The member of the board acting
19 as hearing officer may sit as a member of the board in deciding the
20 matter. The board, after making an independent review of the
21 record and taking any additional evidence as may be necessary and
22 could not reasonably have been offered before the hearing officer,
23 may adopt, with or without revision, the proposed decision and
24 order.

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

28 SEC. 2. Section 1055.2 of the Water Code is amended to read:

29 1055.2. No person *or entity* shall be subject to both civil
30 liability imposed under Section 1055 and civil liability imposed by
31 the superior court under subdivision (d) of Section 1052 or Section
32 1845 for the same act or failure to act.

33 SEC. 3. *Section 1122 of the Water Code is amended to read:*

1 1122. The board may order a reconsideration of all or part of
2 a decision or order on the board’s own motion or on the filing of
3 a petition of any interested person *or entity*. The petition shall be
4 filed not later than 30 days from the date on which the board adopts
5 a decision or order. The authority of the board to order a
6 reconsideration on its own motion shall expire 30 days after it has
7 adopted a decision or order. The board shall order or deny
8 reconsideration on a petition therefor not later than 90 days from
9 the date on which the board adopts the decision or order.

10 *SEC. 4.* Section 1126 of the Water Code is amended to read:

11 1126. (a) It is the intent of the Legislature that all issues
12 relating to state water law decided by the board be reviewed in state
13 courts, if a party seeks judicial review. It is further the intent of the
14 Legislature that the courts assert jurisdiction and exercise
15 discretion to fashion appropriate remedies pursuant to Section 389
16 of the Code of Civil Procedure to facilitate the resolution of state
17 water rights issues in state courts.

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

32 (c) Except as otherwise provided in this section, Section 1094.5
33 of the Code of Civil Procedure shall govern the judicial
34 proceedings.

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

38 (e) In any court case reviewing a decision or order by the state
39 board relating to a permit or license to appropriate water held by
40 the state through the department or any other state agency, or to a

1 permit or license to appropriate water held by the United States
2 through the Bureau of Reclamation or any other federal agency,
3 the election by the United States, or any agency thereof, not to be
4 a party shall not, in and of itself, be the basis for dismissal pursuant
5 to Section 389 of the Code of Civil Procedure or any other
6 provision of law.

7 ~~SEC. 4.—~~

8 *SEC. 5.* Section 1211 of the Water Code is amended to read:

9 1211. (a) Prior to making any change in the point of
10 discharge, place of use, or purpose of use of treated wastewater, the
11 owner of any wastewater treatment plant shall obtain approval of
12 the board for that change. The board shall review such changes
13 pursuant to the provisions of Chapter 10 (commencing with
14 Section 1700) of Part 2 of Division 2.

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

18 ~~SEC. 5.—~~

19 *SEC. 6.* Section 1701.1 is added to the Water Code, to read:

20 1701.1. A petition for change filed after notice of an
21 application shall meet all of the following requirements:

22 (a) State the name and address of the petitioner.

23 (b) Be signed by the petitioner, or the petitioner's agent or
24 attorney.

25 (c) Set forth amendments to the application or an amended
26 application reflecting the proposed change, including any
27 information necessary for the amended application to comply with
28 Section 1260.

29 (d) Include sufficient information to demonstrate a reasonable
30 likelihood that the proposed change will not injure any other legal
31 user of water.

32 (e) Contain other appropriate information and be in the form
33 required by applicable regulations.

34 ~~SEC. 6.—~~

35 *SEC. 7.* Section 1701.2 is added to the Water Code, to read:

36 1701.2. A petition for change in a permit or license shall meet
37 all of the following requirements:

38 (a) State the name and address of the petitioner.

39 (b) Be signed by the petitioner, or the petitioner's agent or
40 attorney.

1 (c) Include all information reasonably available to the
2 petitioner, or that can be obtained from the Department of Fish and
3 Game, concerning the extent, if any, to which fish and wildlife
4 would be affected by the change, and a statement of any measures
5 proposed to be taken for the protection of fish and wildlife in
6 connection with the change.

7 (d) Include sufficient information to demonstrate a reasonable
8 likelihood that the proposed change will not injure any other legal
9 user of water.

10 (e) Contain other appropriate information and be in the form
11 required by applicable regulations.

12 ~~SEC. 7.—~~

13 *SEC. 8.* Section 1701.3 is added to the Water Code, to read:

14 1701.3. (a) After a petition is filed, the board may request
15 additional information reasonably necessary to clarify, amplify,
16 correct, or otherwise supplement the information required to be
17 submitted under this article. The board shall provide a reasonable
18 period for submitting the information.

19 (b) The additional information may include, but is not limited
20 to, any of the following:

21 (1) Information needed to demonstrate that the change will not
22 injure any other legal user of water.

23 (2) Information needed to comply, or demonstrate compliance
24 with, any applicable requirements of the Fish and Game Code or
25 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
26 et seq.).

27 (3) Information needed to comply with Division 13
28 (commencing with Section 21000) of the Public Resources Code.

29 ~~SEC. 8.—~~

30 *SEC. 9.* Section 1701.4 is added to the Water Code, to read:

31 1701.4. If, within the period provided, the petitioner does not
32 provide the information requested pursuant to Section 1701.3, the
33 board shall cancel the petition, unless, for good cause shown, the
34 board allows additional time in which to submit the requested
35 information.

36 ~~SEC. 9.—~~

37 *SEC. 10.* Section 1703.1 is added to the Water Code, to read:

38 1703.1. Any interested person, within the time allowed in the
39 notice of petition, or within the time the board may allow for good

1 cause shown, may file with the board a written protest against
2 approval of the petition.

3 ~~SEC. 10.—~~

4 *SEC. 11.* Section 1703.2 is added to the Water Code, to read:

5 1703.2. The protest shall meet all of the following
6 requirements:

7 (a) State the name and address of the protestant.

8 (b) Be signed by the protestant, or the protestant's agent or
9 attorney.

10 (c) Clearly and specifically set forth the protestant's objections
11 to the approval of the petition, and state the bases for these
12 objections.

13 (d) Contain other appropriate information and be in the form
14 required by applicable regulations.

15 (e) Be served on the petitioner by the protestant by mailing a
16 duplicate copy of the protest to the petitioner or through service
17 undertaken in another manner determined to be adequate by the
18 board.

19 ~~SEC. 11.—~~

20 *SEC. 12.* Section 1703.3 is added to the Water Code, to read:

21 1703.3. The board may request from the protestant additional
22 information reasonably necessary to clarify, amplify, correct, or
23 otherwise supplement the information required to be submitted
24 pursuant to Section 1703.2. The board shall provide a reasonable
25 period for submitting the information, and may allow additional
26 time for good cause shown.

27 ~~SEC. 12.—~~

28 *SEC. 13.* Section 1703.4 is added to the Water Code, to read:

29 1703.4. The protestant and the petitioner shall make a good
30 faith effort to resolve the protest not later than 180 days from the
31 date on which the period provided pursuant to Section 1330
32 expires. For good cause, the board may allow additional time for
33 the protestant and the applicant to attempt to resolve the protest.

34 ~~SEC. 13.—~~

35 *SEC. 14.* Section 1703.5 is added to the Water Code, to read:

36 1703.5. The board may request from the protestant or the
37 petitioner additional information that the board determines is
38 reasonably necessary to attempt to resolve the protest. The board
39 shall provide a reasonable period for submitting the information,
40 and may allow additional time for good cause shown.

1 ~~SEC. 14.—~~

2 *SEC. 15.* Section 1703.6 is added to the Water Code, to
3 read:

4 1703.6. (a) The board may cancel a protest or petition for
5 failure to provide information requested by the board under this
6 article within the period provided.

7 (b) Except as provided in subdivisions (c) and (d), a protest
8 shall not be canceled for failure to submit information not in the
9 possession or under the control of the protestant if the protest
10 meets the requirements of Section 1703.2 and the petitioner is or
11 could be required to submit the information under Section 1701.1,
12 1701.2, and 1701.3.

13 (c) Subject to subdivision (d), if a protest is based on injury to
14 a legal user of water, the board may cancel the protest if the
15 protestant fails to submit any of the following information
16 requested by the board:

17 (1) Information that the protestant is required to submit to the
18 board to comply with Part 5.1 (commencing with Section 5100)
19 during any period after the protest is filed.

20 (2) Information that is reasonably necessary to determine if the
21 protestant has a valid water right.

22 (3) Information concerning the protestant's historical, current,
23 or proposed future diversion and use of water that is reasonably
24 necessary to determine if the proposed appropriation will result in
25 injury to the protestant's exercise of its water right.

26 (d) If the protest is based on an allegation that the proposed
27 change would not be in the public interest, would adversely affect
28 public trust uses, or would have adverse environmental impact, the
29 board may cancel the protest for failure to submit information
30 requested by the board if the board determines both of the
31 following:

32 (1) The public review period has expired for any draft
33 environmental document or negative declaration required to be
34 circulated for public review and comment pursuant to Division 13
35 (commencing with Section 21000) of the Public Resources Code.

36 (2) In the absence of the requested information, there is no
37 substantial evidence in light of the whole record to support the
38 allegation.

39 ~~SEC. 15.—~~

40 *SEC. 16.* Section 1704 of the Water Code is amended to read:

1 1704. (a) The board, after a hearing, may approve with
2 conditions, or deny, a petition.

3 (b) Notice of hearing shall be given by mailing the notice not
4 less than 20 days before the date of hearing to the petitioner and
5 to any protestant by registered mail.

6 (c) (1) The board may, but is not required to, hold a hearing
7 prior to approving an unprotested petition, or if the board
8 determines that undisputed facts support the approval of the
9 petition and there is no disputed issue of material fact.

10 (2) The board may, but is not required to, hold a hearing prior
11 to denying a petition, if, after notice, the board determines that the
12 petition is defective, the petition fails to provide information
13 requested by the board, or undisputed facts support the denial of
14 the petition and there is no disputed issue of material fact.

15 ~~SEC. 16.—~~

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

17 1825. (a) It is the intent of the Legislature that the state
18 should take vigorous action to enforce the terms and conditions of
19 permits, licenses, certifications and registrations to appropriate
20 water, to enforce state board orders and decisions, and to prevent
21 the unlawful diversion of water.

22 ~~SEC. 17.—~~

23 (b) *However, it is also the intent of the Legislature that in cases*
24 *where violations are not committed knowingly, the state use*
25 *appropriate restraint in the exercise of its discretion as to whether*
26 *enforcement action should include monetary penalties.*

27 *SEC. 18.* Section 1831 of the Water Code is amended to read:

28 1831. (a) When the board determines that any person is
29 violating, or threatening to violate, any requirement described in
30 subdivision (d), the board may issue an order to that person to
31 cease and desist from such violation.

32 (b) The cease and desist order shall require such person to
33 comply forthwith or in accordance with a time schedule set by the
34 board.

35 (c) The board may issue a cease and desist order only after
36 notice and an opportunity for hearing pursuant to Section 1834.

37 (d) The board may issue a cease and desist order in response to
38 a violation or threatened violation of any of the following:

39 (1) The prohibition set forth in Section 1052 against
40 unauthorized diversion or use of water subject to this division.

1 (2) Any term or condition of a permit, license, certification, or
2 registration issued under this division.

3 (3) Any order or decision of the board issued under this part,
4 Section 275, Part 1 (commencing with Section 1000) of this
5 division, Part 2 (commencing with Section 10500) of Division 6;
6 Article 7 (commencing with Section 13550) of Chapter 7 of
7 Division 7, or the public trust doctrine.

8 ~~SEC. 18.—~~

9 *SEC. 19.* Section 1832 of the Water Code is amended to read:
10 1832. Cease and desist orders of the board shall be effective
11 upon the issuance thereof. The board may, after notice and
12 opportunity for hearing, upon its own motion or upon receipt of an
13 application from an aggrieved person, modify, revoke, or stay in
14 whole or in part any cease and desist order issued pursuant to this
15 chapter.

16 ~~SEC. 19.—~~

17 *SEC. 20.* Section 1833 of the Water Code is repealed.

18 ~~SEC. 20.—~~

19 *SEC. 21.* Section 1834 of the Water Code is amended to read:
20 1834. (a) In the event that a violation of a requirement
21 described in subdivision (d) of Section 1831 is occurring or
22 threatening to occur, the board shall give notice by personal notice
23 or certified mail, pursuant to which the party shall be informed that
24 he or she may request a hearing not later than 20 days from the date
25 on which the notice is received, to the person allegedly engaged in
26 the violation. The notice shall contain a statement of facts and
27 information that would tend to show the proscribed action, and
28 notification of the requirements of subdivision (b).

29 (b) Unless a written request for a hearing signed by or on behalf
30 of the notified party is delivered to or received by mail by the board
31 within 20 days after receipt of the notice, the board may adopt a
32 cease and desist order, based on the statement of facts and
33 information set forth in the notice, without a hearing.

34 ~~SEC. 21.—~~

35 *SEC. 22.* Section 1845 of the Water Code is amended to read:
36 1845. (a) Upon the failure of any person to comply with a
37 cease and desist order issued by the board pursuant to this chapter,
38 the Attorney General, upon the request of the board, shall petition
39 the superior court for the issuance of prohibitory or mandatory

1 injunctive relief as appropriate, including a temporary restraining
2 order, preliminary injunction, or permanent injunction.

3 (b) (1) Any person or entity who violates a cease and desist
4 order issued pursuant to this chapter may be liable for a sum not
5 to exceed one thousand dollars (\$1,000) for each day in which the
6 violation occurs.

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

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

12 (c) In determining the appropriate amount, the court, or the
13 board, as the case may be, shall take into consideration all relevant
14 circumstances, including, but not limited to, the extent of harm
15 caused by the violation, the nature and persistence of the violation,
16 the length of time over which the violation occurs, and the
17 corrective action, if any, taken by the violator.

18 (d) All funds recovered pursuant to this section shall be
19 transferred to the General Fund of the state.

20 ~~SEC. 22.—~~

21 *SEC. 23.* Section 1850 of the Water Code is amended to read:

22 1850. Any factual or legal determinations made pursuant to a
23 cease and desist order shall be conclusive and shall preclude any
24 party to the order from raising such issues in any subsequent
25 administrative proceeding.

ASSEMBLY THIRD READING
AB 946 (Kelley)
As Amended April 25, 2001
Majority vote

WATER, PARKS & WILDLIFE 11-2 JUDICIARY 8-0

Ayes: Florez, Aroner, Calderon, Frommer, Goldberg, Kehoe, Kelley, Leslie, Pavley, Thomson, Wayne Ayes: Steinberg, Robert Pacheco, Corbett, Dutra, Harman, Longville, Shelley, Wayne

Nays: Dickerson, Wyman

APPROPRIATIONS 14-1

Ayes: Migden, Bates, Lowenthal, Corbett, Correa, Strom-Martin, Maldonado, Robert Pacheco, Pavley, Simitian, Thomson, Wesson, Wiggins, Zettel

Nays: Ashburn

SUMMARY: Makes changes to the State Water Resources Control Board's (SWRCB's) authority to issue licenses and permits for appropriation of water, and to enforce the terms of those licenses and permits. Specifically, this bill:

- 1) Requires prescribed information to be included in a petition for change of place of diversion, change of use, or change of purpose of a license or permit of appropriation, and authorizes SWRCB to request additional information.
- 2) Authorizes and establishes procedures for filing of a written protest by any interested party against approval of a petition for change of place of diversion, change of use, or change of purpose.
- 3) Authorizes SWRCB to approve a petition for change of place of diversion, change of use, or change of purpose with conditions or to deny the petition.
- 4) Provides that a person filing a court challenge to a decision or order of SWRCB does not have to exhaust the administrative remedy of reconsideration by SWRCB, except where the decision or order was made under authority delegated by SWRCB to an officer or employee of SWRCB.
- 5) Provides for additional time for filing a petition for writ of mandate to any person that also seeks reconsideration of an SWRCB decision or order.
- 6) Deletes a provision relating to exercise of independent judgment by the court.
- 7) States 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, and to enforce SWRCB orders and decisions.

- 8) States the intent of the Legislature, however, that where a violation is not made knowingly, the state should use appropriate restraint in the exercise of its discretion as to whether enforcement action should include monetary penalties.
- 9) Authorizes SWRCB to issue a cease and desist order against any person or entity to prevent unauthorized diversion or use of water or violation of a term of a permit or license.
- 10) Provides that civil liability for violation of a cease and desist order may be imposed by the superior court.

FISCAL EFFECT: Unknown

COMMENTS: This bill is the result of a process in which SWRCB convened a Water Rights Working Group and listened to stakeholders about how to improve and streamline the existing water rights application process. This bill is intended to correct deficiencies in SWRCB's enforcement mechanisms, improve processing of water rights petitions, and clarify that Water Code Section 1211 only applies to changes in the discharge or use of treated wastewater that result in reduced flow in a watercourse.

The existing law regarding cease and desist orders for water rights violations is too narrow, and limits the types of violation for which cease and desist orders may issue. The existing law also provides complex procedures for issuance of orders and does not allow for imposition of administrative civil liability for violation of cease and desist orders. This bill corrects these deficiencies.

This bill provides SWRCB with sufficient information in the petition process to assess whether a change in diversion or use of water will result in injury to other users of water. Requirement of sufficient information will expedite the petition process and avoid delays in reaching decisions.

Water Code Section 1211 requires the owner of a wastewater treatment plant to obtain the approval of SWRCB before making changes in the point of discharge, place of use, or purpose of use of treated water. This rule is too broad, and leads to the review of changes that do not result in a decrease in flow and pose no threat of adverse impacts to third-party water rights holders and environmental interests. This bill clarifies that changes with no impact need not be reviewed.

This bill was amended in Water, Parks and Wildlife Committee. One amendment specifies a notice procedure for cease and desist orders. Another amendment extends the period during which a notified party may request a hearing from 15 to 20 days. Additional amendments in Judiciary Committee clarify that provisions of this bill apply to any person or entity, extend the time for filing an action against SWRCB, and state that the provisions of this bill are declaratory of existing law.

Analysis Prepared by: Jeff Volberg / W., P. & W. / (916) 319-2096

FN: 0000861

AMENDMENT DATE: April 25, 2001
POSITION: Neutral
SPONSOR: State Water Resources Control Board (CEPA 01-14)

BILL NUMBER: AB 946
AUTHOR: D. Kelley

BILL SUMMARY: Water Rights

This bill, the outgrowth of various stakeholder workshops, would make changes to the Water Resources Control Board's (Water Board's) enforcement authority and clarify existing law.

Specifically, the bill would: specify water rights petition requirements, exempt a wastewater treatment facility owner from obtaining approval for a change in the point of discharge of treated wastewater if the change does not result in decreasing the flow in any portion of a watercourse, codify existing practice allowing for an extension for filing an action against the Water Board in California Environmental Quality Act proceedings, authorize the Water Board to issue a cease and desist order to enforce the terms and conditions of permits and licenses, and allow for civil liability to be imposed by the superior court or the Water Board.



FISCAL SUMMARY

The net fiscal impact of expanding enforcement authority is unknown, but the Water Board estimates it to be minor, with any additional enforcement costs offset by fine revenues.

COMMENTS

The Water Board is responsible for issuing water rights permits and licenses, enforcing terms and conditions of permits and licenses, abating illegal diversions, and preventing waste or unreasonable use of water. Over the past several years, additional funding has been provided to address workload, but a sizable permitting backlog still exists. It is assumed that streamlining the water rights petition process would lead to greater efficiency.

Code/Department Agency or Revenue Type	(Fiscal Impact by Fiscal Year)								Fund Code
	(Dollars in Thousands)								
	SO LA CO RV	PROP 98	FC	2000-2001 FC	2001-2002 FC	2002-2003 FC			
1256/Othr Reg Fee	RV	No		-----	No/Minor Fiscal Impact	-----			0001
3940/SWRCB	SO	No		-----	No/Minor Fiscal Impact	-----			0001

Analyst/Principal (0622) R. Dean	Date 5/11/01	Program Budget Manager Fred Klass	Date 5/11/01
 Department Deputy Director		 Date	

Governor's Office: By: _____ Date: _____
 Position Noted _____
 Position Approved _____
 Position Disapproved _____

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Date of Hearing: May 16, 2001

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 946 (Kelley) – As Amended: April 25, 2001

Policy Committee:	Water, Parks & Wildlife	Vote:	11-2
	Judiciary		8-0

Urgency: No State Mandated Local Program: No Reimbursable:

SUMMARY

This bill modifies the process by which the State Water Resources Control Board (water board) issues licenses and permits for water appropriations and by which it enforces the terms of those licenses and permits. Specifically, this bill:

- 1) Allows a person who disputes a water board decision or order to file a court challenge without having to exhaust the board's administrative remedies.
- 2) Allows the water board to issue a cease and desist order to prevent an unauthorized diversion or use of water or a violation of the terms of a permit or license.
- 3) Modifies the standard used by a court to review a cease and desist order issued by the water board.
- 4) Allows civil liability to be imposed by the superior court for violation of a cease and desist order.
- 5) Modifies the process for water board consideration of petitions for change of water rights (place of diversion, change of use or change of purpose) by requiring prescribed information to be included in the petition, establishing procedures for filing a written protest against approval of a petition, and allowing the water board to approve the petition with conditions.

FISCAL EFFECT

Minor offsetting costs and savings to the water board to modify its procedures for considering petitions of water rights changes and for enforcing these rights. (General Fund.)

COMMENTS

Rationale. This bill, sponsored by the water board, implements the product of a Water Rights Working Group on how to improve and streamline the water rights application process.

Analysis Prepared by: Steve Archibald / APPR. / (916) 319-2081

AB 946 (Kelley)
ASSEMBLY APPROPRIATIONS COMMITTEE
MAY 16, 2001

MADAM CHAIR & MEMBERS:

AB 946, SPONSORED BY THE STATE WATER RESOURCES CONTROL BOARD, CORRECTS DEFICIENCIES IN THE BOARD'S WATER RIGHTS CEASE AND DESIST ORDER AUTHORITY - IMPROVES WATER RIGHT PETITION PROCESSING - AND CLARIFIES WATER CODE PROVISIONS REGARDING DISCHARGE OR USE OF TREATED WASTEWATER.

- WITH ME TODAY ARE STAFF FROM THE STATE WATER BOARD TO ANSWER ANY QUESTIONS YOU MAY HAVE.
- THANKYOU!

AB 946 (KELLEY)
WATER RIGHTS

Version: 4/25/01 Last Amended
Vote: Majority
None

Vice-Chair: Richard Dickerson
Tax or Fee Increase: No

A bill mainly intended to streamline Water Resources Control Board authorities, but would also expand their authority to issue cease and desist orders for 'threatened violations' and impose civil penalties for a violation of the order even if it did not result in a violation of the Water Code.

Proposed Amendments: See #2 and #3 under "Comments" Section of the Analysis.

None: Previous version was "support if amended." The sponsors accepted a couple of amendments to address some of the concerns in the previous versions of the bill, but have steadfastly refused to move on the remaining issues. Since the remaining amendments will not be adopted a "support if amended" position is no longer valid.

Policy Question

1. Should an aggrieved party be able to file a writ of mandate for review of a decision or order before reconsideration by the SWRCB is complete?
2. Should changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse be excepted from review and approval by the board?
3. Should the board be able to cancel a protest or petition for water rights for failure to provide information requested by the board?
4. Should the board, after a hearing (except in limited circumstances), be able to approve with conditions, or deny a water rights petition?
5. Should the authority of the board to issue a cease and desist order be extended to threatened unauthorized diversions or violations of permits?
6. Should the board be provided extended authority to impose civil penalties for violations of a cease and desist order?

Summary

Revises the procedure for reconsideration that may otherwise be sought by an aggrieved party of a decision of the Water Resources Control Board to not be an administrative remedy that must be exhausted before filing petition in court (for a writ of mandate) except in cases where the decision is issued under the authority delegated to an officer or employee of the board. This bill also: (1) Exempts the need to seek board approval for changes in the point of discharge, place of use, or purpose of use of treated wastewater that does not result in decreasing the flow in any portion of a watercourse; (2) Provides the board with the authority to request additional information from a petitioner or protestor of a water rights petition and allows the board to cancel a protest or petition for failure to provide adequate information (except that a protest may not be cancelled for failure to provide information that is not in the control or possession of the protestor); (3) Requires the protestor and petitioner to make a good faith effort to resolve the protest not later than 180 days from the final date a protest may be filed; (4) Allows the board, after hearing, to approve with conditions, or deny a petition; (5) Clarifies that the board is not required to hold a hearing prior to approving a petition if the petition is not protested, or if the board determines that undisputed facts support the approval of the petition and no disputed issue is of material fact; (6) Provides that the board may deny a petition without hearing 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; (7) Adds to Legislative intent that the state should take vigorous action to enforce the terms and conditions of certifications and registrations to appropriate water and to enforce board orders and decisions to prevent the unlawful diversion of water; (8) Provides that the board may issue a cease and desist order for a violation or threatened violation of the prohibition against unauthorized

Assembly Republican Water Votes (11-2) 4/3/01

Ayes: Kelley, Leslie
Noes: Dickerson, Wyman
Abs. / NV: Aanestad, Hollingsworth

Assembly Republican Judiciary Votes (8-0) 4/17/01

Ayes: Robert Pacheco, Harman
Noes: None
Abs. / NV: Bates

Assembly Republican Appropriations Votes (14-1) 5/16/01

Ayes: Bates, Maldonado, Robert Pacheco, Zettel
Noes: Ashburn
Abs. / NV: Daucher, Runner

Assembly Republican Votes (0-0) 1/1/01

Ayes: None
Noes: None
Abs. / NV: None

diversion or use of water, or of any term or condition of a permit, license, certification, or registration, or of any order or decision by the board or the public trust doctrine; and (9) Provides that the board may administratively impose civil liabilities for a violation of a cease and desist order.

Support

State Water Resources Control Board

Opposition

None on file

Arguments In Support of the Bill

1. Applies the current provisions concerning water right applications to water right petitions. The bill that added the provisions to water right applications was unanimously passed in 1997.
2. Adds additional legal instruments issued by the board to the instruments that should be vigorously enforced, according to legislative intent.
3. Limits the need to seek approval from the board for changes to wastewater discharges or use to only situations that decrease the flow in any portion of a watercourse.
4. Simplifies and expands the board's ability to issue cease and desist orders and allows the board to issue them in additional circumstances of threatened violations.
5. Extends to the board the authority to administratively levy civil fines for violations of a cease and desist order.

Arguments In Opposition to the Bill

1. The board should not be able to issue a cease and desist order when no actual violation has occurred and then impose civil penalties for a violation of the order. This may result in civil penalties being imposed when no violation of the referenced statutes actually occurred.
2. Increases the civil liability for unauthorized diversion from \$500 per day to \$1,000 per day if it also involves the violation of a cease and desist order.
3. If the so-called clarification of reconsideration is interpreted to require additional review by the board, then could such review unnecessarily drag out disputes with entities who would otherwise seek to move on to the courts?
4. To the entities subject to and disputing cease and desist orders they may otherwise prefer the courts to retain the right to exercise such independent judgment, notwithstanding more time and cost of such judicial review.

Fiscal Effect

As Approved in Assembly Appropriations on May 16, 2001:

MINOR STATE COSTS – Minor costs to the

board offset by savings from the streamlining of procedures. Potential increased enforcement costs, offset by increased fines and penalties.

Comments

1. The author references the State Water Resources Control Board as the sponsor. The board provides the following background: (1) SB 849 (Kelley) (chapter 323, statutes of 1997) authorized the SWRCB to take action to expedite water right application processing, among other provisions. The bill passed without any votes in opposition. This measure would extend those same procedures to water right petitions. (2) The provisions on cease and desist orders and changes in point of discharge of treated wastewater were enacted in 1980 (chapter 933, statutes of 1980) to implement the recommendations of the Governor's Commission to Review California Water Rights Law, Final Report 1978. The commission was chaired by former Chief Justice Donald Wright and included leading authorities on water rights.
2. The following amendments will eliminate the ability of the board to issue a cease and desist order when no violation has occurred. The board would retain the ability to seek a preliminary injunction through a court of law and have expanded ability to administratively impose civil penalties for violations of a cease and desist order where an actual violation occurred.
 - **RECOMMENDED AMENDMENTS TO THE 4/25/01 VERSION:** (1) Page 10, Line 27, SEC. 18. Section 1831 of the Water Code is amended to read: "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 such violation. (b) The cease and desist order shall require such 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 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 order or decision of the board issued under this part, Section 275, Part 1 (commencing with Section 1000) of this division, Part 2 (commencing with Section 10500) of Division 6; Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, or the public trust doctrine."; and (2) Page 11, Line 19, SEC. 21. Section 1834 of the Water Code is amended to read: "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 to the person allegedly engaged in the violation ...”.

3. **TECHNICAL AMENDMENTS.** The author’s office has provided two technical amendments: (1) to add “or entity” to Water Code Sections 1055, 1055.2, 1122 (this latter section added as SEC.3 to the bill for this revision); and (2) Add the following clarifying language (italicized language) pertaining to time for filing a petition for writ of mandate under Water Code Section 1126: “The time for filing the petition for writ of mandate *and the time for filing an action or proceeding against the board 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 provisions of AB 946 of the 2001-02 Regular Session amending this subdivision*

are declaratory of existing law.” The first series of amendments adding “or entity” addresses a concern for retaining consistency in application of administrative procedure. The definition of “person” in those affected sections could otherwise be applied too narrowly and subject some entities holding or claiming water rights to different administrative procedures. (However, this could raise the question of whether this broadened-application to cover such entities would place more regulatory onus on them than if not so included). The second amendment addresses concerns of parties seeking to avoid dismissal of actions under the California Environmental Quality Act (CEQA) beyond the deadline of the statute of limitations brought against the SWRCB.

Policy Consultant: Greg Hurner/Mark Redmond 5/22/01

Fiscal Consultant: Catherine Kennard 5/11/01

AB 946 (Kelley)
ASSEMBLY FLOOR STATEMENT
MAY 24, 2001

MR. SPEAKER (OR MADAM SPEAKER) & MEMBERS:

AB 946 IS SPONSORED BY THE STATE WATER RESOURCES CONTROL BOARD.

IT CORRECTS DEFICIENCIES IN THE BOARD'S WATER RIGHTS' CEASE AND DESIST ORDER AUTHORITY - IMPROVES WATER RIGHT PETITION PROCESSING - AND, CLARIFIES WATER CODE PROVISIONS REGARDING DISCHARGE OR USE OF TREATED WASTEWATER.

I ASK FOR YOUR AYE VOTE! THANK YOU.

AB 946
f



PCL
PLANNING AND CONSERVATION LEAGUE

OFFICERS

George Sweetwood
President
Kevin Johnson
Senior Vice President
Gary Patton
Vice President
J William Yeates
Secretary-Treasurer

REGIONAL VICE PRESIDENTS

Elisabeth Brown, *Orange County*
Phyllis Faber, *Bay Area*
Daniel Frost, *Central Valley*
Dorothy Green, *Los Angeles*

BOARD OF DIRECTORS

Archaeological Conservancy
Audubon Society: Bay Area Chapters
California Association of
Bicycling Organizations
California Association of Local
Conservation Corps
California Native Plant Society
California Outdoors
Californians Against Waste
Greenbelt Alliance
Heal The Bay
Laguna Greenbelt Inc.
League To Save Lake Tahoe
Marin Conservation League
Mono Lake Committee
Mountains Restoration Trust
Save San Francisco Bay Association
Scenic California
Southern California Agricultural
Land Foundation
Train Riders Association of California
Urban Creeks Council of California
Zero Population Growth

Robert Berka, Menlo Park
Mary Brissenden, Hope Valley
Robert Caughlan, Menlo Park
Bill Center, Lotus
Jan Chatten-Brown, Los Angeles
Elizabeth Cheadle, Los Angeles
Pete Dangermond, Sacramento
Joseph Edmiston, Malibu
Robert J. Erickson, Alameda
Esther Feldman, Los Angeles
Scott Ferguson, Laguna Beach
Scott Fleming, Berkeley
Carlyle Hall, Los Angeles
Bill Havert, Palm Desert
Totton Heffelfinger, San Francisco
Michael Jacobs, Santa Cruz
Douglas Linney, Oakland
Peggy Mensinger, Modesto
Donald Murphy, El Dorado Hills
Ralph Perry, Los Angeles
Nestor G. Ramos, San Diego
Paul Relis, Stanton
Denis Rice, San Francisco
Tony Rossmann, San Francisco
Claire Schlotterbeck, Brea
Daniel Sullivan, San Francisco
Art Torres, Los Angeles
John Van de Kamp, Los Angeles

ASSOCIATE MEMBERS

California Oak Foundation
California Trout
East Bay Parks AFSCME 2428
Greenspace
LandWatch Monterey County
Marin Agricultural Land Trust
Regional Parks Foundation
Sanctuary Forest
San Eljio Lagoon Conservancy
Save Mount Diablo
Yuba River Citizens League

May 29, 2001

Hon. David Kelley
State Capitol, Room 4162
Sacramento, CA 95814

A.B. 946 – Support

Dear Assembly Member Kelley:

The Planning and Conservation League (PCL) supports A.B. 946. As demands on California's water resources increase, better enforcement to prevent illegal diversions and assure compliance with State Water Resources Control Board (SWRCB) decisions and orders is increasingly important. By correcting inadequacies in the SWRCB's water right cease and desist authority, A.B. 946 will help provide for better enforcement.

Section 1825 of the Water Code declares that "the state should take vigorous action . . . prevent unlawful diversion of water." But unpermitted diversions are commonplace. As a result both senior water right holders and instream beneficial uses are deprived of water to which they are entitled. Illegal diversions are a major reason for declining anadromous fisheries, driving many salmon and steelhead runs to the brink of extinction. A.B. 946 would help address this problem by authorizing the SWRCB to issue cease and desist orders for illegal diversions.

A.B. 946 will also provide authority for the SWRCB to issue cease and desist orders in response to violations of SWRCB decisions and orders that require prevention of waste or unreasonable use of water or protection of public trust resources. The California Supreme Court's Mono Lake opinion (*National Audubon Society v. Superior Court*) emphasizes that the SWRCB has a duty of continuing supervision to implement these requirements. While the SWRCB's authority to issue orders to prevent waste of water or damage in instream beneficial uses is well established, however, the Water Code does not provide any administrative remedy if the SWRCB's orders are violated. A.B. 946 would eliminate this deficiency in the SWRCB's enforcement authority.

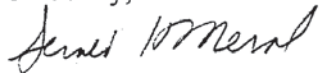
California Affiliate



A.B. 946 will also simplify the procedures for issuing cease and desist orders, and help assure compliance by authorizing the SWRCB to impose penalties administratively when cease and desist orders are violated. These changes will also help provide for better enforcement.

Environmental groups, agricultural interests and urban water suppliers often have different views on water resource issues, but one thing they should all agree on is the need for effective water right enforcement, including enforcement of the terms of SWRCB decisions and orders and the prevention of illegal diversions. PCL therefore supports A.B. 946.

Sincerely,

A handwritten signature in cursive script that reads "Gerald H. Meral".

Gerald H. Meral, Ph. D.
Executive Director

Km 5158

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Byron Sher, Chairman

BACKGROUND INFORMATION REQUEST

RECEIVED
JUN 12 2001
CAPITOL OFFICE

Measure: AB 946

Author : Assembly Member Kelley

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
STATE WATER RESOURCES CONTROL BOARD
Eric Feller @341-5252 or Andy Sawyer @ 341-5191
- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.
SB 849 (Kelley) Chapter 323, Statutes of 1997. Authorized the SWRCB to take action to expedite water right application processing.
- c. Has there been an interim committee report on the bill? If so, please identify the report.
NO

2. What is the problem or deficiency in the present law which this bill seeks to remedy? The provisions on cease & desist orders & changes in point of discharge of treated wastewater were enacted in 1980 (Ch 933, Stat of 1980) to implement recoms. of the Commission, chaired by former Chief Just Donald Wright & including leading auth. on water rights, established to review and recommend changes in CA water rights law. (Governor's Commission to Review CA Water Rights Law, Final Report 1978).

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff. (See attached 3 pages)

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.
None planned.

6. List the witnesses you plan to have testify.
Eric Feller and Andy Sawyer w/ the SWRCB

RETURN THIS FORM TO: SENATE COMMITTEE ON ENVIRONMENTAL QUALITY, Rm 2203
ASAP! Phone (916) 324-0894 Attn: Ann Boone
STAFF PERSON TO CONTACT: Nancy Lucchesi Newbill @ 319-2442



SIERRA CLUB
CALIFORNIA

June 25, 2001

RECEIVED. STATE CAPITOL

JUN 26 2001

Ak'd _____ By _____

Senator Jim Costa, Chairman
Senate Committee on Agriculture and Water Resources
State Capitol Room 406
Sacramento, CA 95814

RE: AB 946 (KELLEY)
SUPPORT

Dear Chairman Costa:

The Sierra Club of California asks that you and your fellow members of the Senate Committee on Agriculture and Water Resources vote "Aye" on AB 946 (Kelley), a bill to improve the ability of the State Water Resources Control Board to enforce water rulings. The Sierra Club recognizes illegal water diversions as a serious threat to many species and their habitat. The board must have an enforceable cease and desist power if it is going to be expected to protect the environment and rightful water rights owners.

The benefits of AB 946 include:

- It will improve water right enforcement by correcting deficiencies in the State Water Resources Control Board's cease and desist order authority.
- Effective water right enforcement benefits both water right holders and the environment. Illegal diversions, in particular, often contribute to conditions where instream flows are reduced or eliminated, to the detriment of fish, wildlife, and recreation. AB 946 would allow use of cease and desist orders to halt illegal diversions.
- AB 946 would improve the state's ability to enforce the terms of water right permits and licenses.
- AB 946 would also provide authority to issue cease and desist orders for violations of other water right orders, including orders approving water transfers.
- It is especially important that water right orders applying the public trust doctrine, including orders setting instream flow requirements or implementing water quality standards, be enforceable, as AB 946 would provide.
- Increasing demands on the state's limited water resources will require an increasing emphasis on water conservation and wastewater reclamation. By authorizing use of cease and desist orders in response to violation of water right orders directed against the waste or unreasonable use of water, AB 946 will help in that effort.



Charles Poochigian

Capitol #5087

- By allowing the State Water Resources Control Board to impose penalties for violation of cease and desist orders through administrative proceedings, instead of having to go to court as is now required, AB 946 will also help ensure compliance with cease and desist orders.
- Fair and effective enforcement helps protect the interests of all legitimate water users, including those who depend on California's rivers and streams for recreation and for fish and wildlife habitat.

For the above-stated reasons, the Sierra Club of California asks for your "AYE" vote for AB 946.

Sincerely yours,



Tod Bedrosian
Senior Legislative Representative

cc: Members, Senate Agriculture and Water Resources Committee
Assemblyman Kelley



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Executive Office

1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 341-5621 • Web Site Address: <http://www.swrcb.ca.gov>

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>.*

JUN 29 2001

JUN 29 2001

The Honorable Jim Costa, Chair
Senate Committee on Agriculture and Water Resources
California State Senate
Room 406, State Capitol
Sacramento, CA 95814

Dear Senator Costa:

RE: AB 946 (KELLEY): WATER RIGHTS

I am writing on behalf of the State Water Resources Control Board (SWRCB), the sponsor of AB 946, to urge your support of this bill, which is scheduled for hearing on July 3. AB 946 would improve water right petition processing, and clarify that Water Code § 1211 only applies to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.

To expedite water right petition processing, AB 946 would extend the water right application processing improvements made in 1997 (Ch. 323, SB 849, Kelley) to water right petition processing. The SWRCB would be authorized to request supplemental information from a petitioner or protestant that is necessary to evaluate the petition or protest. If the petitioner or protestant does not provide the information, the bill allows the SWRCB to cancel the petition or protest. The bill also clarifies procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.

Existing law requires the owner of a wastewater treatment plant to obtain SWRCB approval before making any change in the point of discharge, place of use, or purpose of use of treated wastewater. AB 946 would provide that the wastewater change petition applies only to changes in the discharge or use of treated wastewater that result in reduced flow in any portion of the watercourse.

California Environmental Protection Agency




JUN 29 2001

If you have any questions or wish to discuss the bill further, please feel free to contact me at 341-5615, or our Acting Legislative Director, Judy Verhaag, at 341-5257.

Sincerely,



 Celeste Cantú
Executive Dire

cc. Assembly Member Dave Kelley
Members, Senate Agriculture and Water Resources Committee

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN SENATE JULY 2, 2001
AMENDED IN ASSEMBLY APRIL 25, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 946

Introduced by Assembly Member Kelley

February 23, 2001

An act to amend Sections 1055, 1055.2, 1122, 1126, 1211, ~~1704, 1825, 1831, 1832, 1834, 1845, and 1850 of~~, and 1704 of, and to add Sections 1701.1, 1701.2, 1701.3, 1701.4, 1703.1, 1703.2, 1703.3, 1703.4, 1703.5, and 1703.6 to, ~~and to repeal Section 1833 of~~, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as amended, Kelley. Water rights.

(1) Existing law specifies procedures under which a person may be subject to administrative civil liability for unauthorized diversion or use of water. Existing law specifies procedures under which the State Water Resources Board may order a reconsideration of any of its decisions or orders on the filing of a petition for writ of mandate by any interested person.

This bill would expand these procedures to apply to any person or entity.

(2) Existing law authorizes any party aggrieved by any decision or order of the board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless reconsideration makes available a higher level of review of a decision

or order issued under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate. ~~The bill would delete the provision relating to the exercise of independent judgment by a court.~~

(3) Existing law requires that the time for filing the petition for a writ of mandate described in (2) above be extended for any person who seeks reconsideration of the decision or order of the board.

Existing law, the California Environmental Quality Act (CEQA), requires that any action or proceeding to challenge certain acts or decisions of a public agency on the grounds of noncompliance with the act be commenced within certain time limits.

This bill would require that the time for filing any of these CEQA actions or proceedings against the board be extended for any person who seeks reconsideration of any decision or order of the board. ~~This~~ *The* bill would provide that the amendment made by this bill, with respect to this provision, does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement 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.

(5) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the

petition and would impose requirements in connection with the filing of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

~~(6) Existing law authorizes the board to issue a preliminary cease and desist order to any person holding a permit or license to appropriate water if the board determines that that person is violating a term or condition of that permit or license and provides for the issue of a final cease and desist order. Existing law requires the Attorney General, if so requested by the board and upon the failure of any person to comply with a final cease and desist order, to petition the superior court for the issuance of specified relief.~~

~~This bill would delete references to a preliminary or final cease and desist order and, instead, would authorize the board to issue a cease and desist order to any person who the board determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the board, or prescribed orders or decisions of the board. The bill would require the board, prior to adopting a cease and desist order, to give prescribed notice by personal notice or certified mail to the person allegedly engaged in the violation.~~

~~The bill would specify that civil liability may be imposed by the superior court, and would authorize the board to impose that liability administratively, on any person who violates a cease and desist order.~~

~~(7) Existing law makes a statement of legislative intent regarding the need for the state to take action to enforce the terms and conditions of permits and licenses to appropriate water.~~

~~This bill would revise that statement of legislative intent.~~

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

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

1 SECTION 1. Section 1055 of the Water Code is amended to
2 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, ~~Section 1845,~~
6 or Section 5107. The complaint shall allege the act or failure to act
7 that constitutes a trespass or violation, the provision of law
8 authorizing civil liability to be imposed, and the proposed civil
9 liability.

10 (b) The complaint shall be served by personal notice or
11 certified mail, and shall inform the party so served that the party
12 may request a hearing within 20 days after the party has been
13 served. The hearing shall be before a member of the board as it may
14 specify.

15 (c) After any hearing, the member shall report a proposed
16 decision and order to the board and shall supply a copy to the party
17 served with the complaint, the board's executive director, and any
18 other person requesting a copy. The member of the board acting
19 as hearing officer may sit as a member of the board in deciding the
20 matter. The board, after making an independent review of the
21 record and taking any additional evidence as may be necessary and
22 could not reasonably have been offered before the hearing officer,
23 may adopt, with or without revision, the proposed decision and
24 order.

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

28 SEC. 2. Section 1055.2 of the Water Code is amended to read:

29 1055.2. No person or entity shall be subject to both civil
30 liability imposed under Section 1055 and civil liability imposed by
31 the superior court under subdivision (d) of Section 1052 ~~or Section~~
32 ~~1845~~ for the same act or failure to act.

33 SEC. 3. Section 1122 of the Water Code is amended to read:

34 1122. The board may order a reconsideration of all or part of
35 a decision or order on the board's own motion or on the filing of
36 a petition of any interested person or entity. The petition shall be
37 filed not later than 30 days from the date on which the board adopts
38 a decision or order. The authority of the board to order a

1 reconsideration on its own motion shall expire 30 days after it has
2 adopted a decision or order. The board shall order or deny
3 reconsideration on a petition therefor not later than 90 days from
4 the date on which the board adopts the decision or order.

5 SEC. 4. Section 1126 of the Water Code is amended to read:

6 1126. (a) It is the intent of the Legislature that all issues
7 relating to state water law decided by the board be reviewed in state
8 courts, if a party seeks judicial review. It is further the intent of the
9 Legislature that the courts assert jurisdiction and exercise
10 discretion to fashion appropriate remedies pursuant to Section 389
11 of the Code of Civil Procedure to facilitate the resolution of state
12 water rights issues in state courts.

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

28 ~~(c) Except as otherwise provided in this section, Section 1094.5~~
29 ~~of the Code of Civil Procedure shall govern the judicial~~
30 ~~proceedings~~ *judicial proceedings under this section. For the*
31 *purposes of subdivision (c) of Section 1094.5 of the Code of Civil*
32 *Procedure, the court shall exercise its independent judgement on*
33 *the evidence in any case involving the judicial review of a cease*
34 *and desist order issued pursuant to Article 2 (commencing with*
35 *Section 1831) of Chapter 12 of Part 2 of Division 2, and in any*
36 *other case in which the court is authorized by law to exercise its*
37 *independent judgement on the evidence.*

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

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

10 SEC. 5. Section 1211 of the Water Code is amended to read:

11 1211. (a) Prior to making any change in the point of
12 discharge, place of use, or purpose of use of treated wastewater, the
13 owner of any wastewater treatment plant shall obtain approval of
14 the board for that change. The board shall review such changes
15 pursuant to the provisions of Chapter 10 (commencing with
16 Section 1700) of Part 2 of Division 2.

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

20 SEC. 6. Section 1701.1 is added to the Water Code, to read:

21 1701.1. A petition for change filed after notice of an
22 application shall meet all of the following requirements:

23 (a) State the name and address of the petitioner.

24 (b) Be signed by the petitioner, or the petitioner's agent or
25 attorney.

26 (c) Set forth amendments to the application or an amended
27 application reflecting the proposed change, including any
28 information necessary for the amended application to comply with
29 Section 1260.

30 (d) Include sufficient information to demonstrate a reasonable
31 likelihood that the proposed change will not injure any other legal
32 user of water.

33 (e) Contain other appropriate information and be in the form
34 required by applicable regulations.

35 SEC. 7. Section 1701.2 is added to the Water Code, to read:

36 1701.2. A petition for change in a permit or license shall meet
37 all of the following requirements:

38 (a) State the name and address of the petitioner.

39 (b) Be signed by the petitioner, or the petitioner's agent or
40 attorney.

1 (c) Include all information reasonably available to the
2 petitioner, or that can be obtained from the Department of Fish and
3 Game, concerning the extent, if any, to which fish and wildlife
4 would be affected by the change, and a statement of any measures
5 proposed to be taken for the protection of fish and wildlife in
6 connection with the change.

7 (d) Include sufficient information to demonstrate a reasonable
8 likelihood that the proposed change will not injure any other legal
9 user of water.

10 (e) Contain other appropriate information and be in the form
11 required by applicable regulations.

12 SEC. 8. Section 1701.3 is added to the Water Code, to read:

13 1701.3. (a) After a petition is filed, the board may request
14 additional information reasonably necessary to clarify, amplify,
15 correct, or otherwise supplement the information required to be
16 submitted under this article. The board shall provide a reasonable
17 period for submitting the information.

18 (b) The additional information may include, but is not limited
19 to, any of the following:

20 (1) Information needed to demonstrate that the change will not
21 injure any other legal user of water.

22 (2) Information needed to ~~comply, or demonstrate compliance~~
23 ~~with,~~ *demonstrate that the change will comply with* any applicable
24 requirements of the Fish and Game Code or the federal
25 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

26 (3) Information needed to comply with Division 13
27 (commencing with Section 21000) of the Public Resources Code.

28 SEC. 9. Section 1701.4 is added to the Water Code, to read:

29 1701.4. If, within the period provided, the petitioner does not
30 provide the information requested pursuant to Section 1701.3, the
31 board shall cancel the petition, unless, for good cause shown, the
32 board allows additional time in which to submit the requested
33 information.

34 SEC. 10. Section 1703.1 is added to the Water Code, to read:

35 1703.1. Any interested person, within the time allowed in the
36 notice of petition, or within the time the board may allow for good
37 cause shown, may file with the board a written protest against
38 approval of the petition.

39 SEC. 11. Section 1703.2 is added to the Water Code, to read:

1 1703.2. The protest shall meet all of the following
2 requirements:

3 (a) State the name and address of the protestant.

4 (b) Be signed by the protestant, or the protestant's agent or
5 attorney.

6 (c) Clearly and specifically set forth the protestant's objections
7 to the approval of the petition, and state the bases for these
8 objections.

9 (d) Contain other appropriate information and be in the form
10 required by applicable regulations.

11 (e) Be served on the petitioner by the protestant by mailing a
12 duplicate copy of the protest to the petitioner or through service
13 undertaken in another manner determined to be adequate by the
14 board.

15 SEC. 12. Section 1703.3 is added to the Water Code, to read:

16 1703.3. The board may request from the protestant additional
17 information reasonably necessary to clarify, amplify, correct, or
18 otherwise supplement the information required to be submitted
19 pursuant to Section 1703.2. The board shall provide a reasonable
20 period for submitting the information, and may allow additional
21 time for good cause shown.

22 SEC. 13. Section 1703.4 is added to the Water Code, to read:

23 1703.4. The protestant and the petitioner shall make a good
24 faith effort to resolve the protest not later than 180 days from the
25 date on which the period provided pursuant to Section ~~1330~~ 1703.1
26 expires. For good cause, the board may allow additional time for
27 the protestant and the applicant to attempt to resolve the protest.

28 SEC. 14. Section 1703.5 is added to the Water Code, to read:

29 1703.5. The board may request from the protestant or the
30 petitioner additional information that the board determines is
31 reasonably necessary to attempt to resolve the protest. The board
32 shall provide a reasonable period for submitting the information,
33 and may allow additional time for good cause shown.

34 SEC. 15. Section 1703.6 is added to the Water Code, to
35 read:

36 1703.6. (a) The board may cancel a protest or petition for
37 failure to provide information requested by the board under this
38 article within the period provided.

39 (b) Except as provided in subdivisions (c) and (d), a protest
40 shall not be canceled for failure to submit information not in the

1 possession or under the control of the protestant if the protest
2 meets the requirements of Section 1703.2 and the petitioner is or
3 could be required to submit the information under Section 1701.1,
4 1701.2, and 1701.3.

5 (c) ~~Subject to subdivision (d),~~ *If* a protest is based on injury
6 to a legal user of water, the board may cancel the protest if the
7 protestant fails to submit any of the following information
8 requested by the board:

9 (1) Information that the protestant is required to submit to the
10 board to comply with Part 5.1 (commencing with Section 5100)
11 during any period after the protest is filed.

12 (2) Information that is reasonably necessary to determine if the
13 protestant has a valid water right.

14 (3) Information concerning the protestant's historical, current,
15 or proposed future diversion and use of water that is reasonably
16 necessary to determine if the proposed ~~appropriation~~ *change* will
17 result in injury to the protestant's exercise of its water right.

18 ~~(d) If the protest is based on an allegation that the proposed~~
19 ~~change would not be in the public interest, would adversely affect~~
20 ~~public trust uses, or would have adverse environmental impact, the~~

21 *(d) If the protest is based on an allegation other than injury to*
22 *a legal user of water, the board may cancel the protest for failure*
23 *to submit information requested by the board if the board*
24 *determines both of the following:*

25 (1) The public review period has expired for any draft
26 environmental document or negative declaration required to be
27 circulated for public review and comment pursuant to Division 13
28 (commencing with Section 21000) of the Public Resources Code.

29 (2) In the absence of the requested information, there is no
30 substantial evidence in light of the whole record to support the
31 allegation.

32 *(e) If a protest is subject to both subdivisions (c) and (d), the*
33 *part of the protest subject to subdivision (c) may be cancelled*
34 *pursuant to subdivision (c) and the part of the protest subject to*
35 *subdivision (d) may be cancelled pursuant to subdivision (d).*

36 SEC. 16. Section 1704 of the Water Code is amended to read:

37 1704. (a) The board, after a hearing, may approve with
38 conditions, or deny, a petition.

1 (b) Notice of hearing shall be given by mailing the notice not
2 less than 20 days before the date of hearing to the petitioner and
3 to any protestant by registered mail.

4 (c) (1) The board may, but is not required to, hold a hearing
5 prior to approving an unprotested petition, or if the board
6 determines that undisputed facts support the approval of the
7 petition and there is no disputed issue of material fact.

8 (2) The board may, but is not required to, hold a hearing prior
9 to denying a petition, if, after notice, the board determines that the
10 petition is defective, the petition fails to provide information
11 requested by the board, or undisputed facts support the denial of
12 the petition and there is no disputed issue of material fact.

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

14 ~~1825. (a) It is the intent of the Legislature that the state should~~
15 ~~take vigorous action to enforce the terms and conditions of~~
16 ~~permits, licenses, certifications and registrations to appropriate~~
17 ~~water, to enforce state board orders and decisions, and to prevent~~
18 ~~the unlawful diversion of water.~~

19 ~~(b) However, it is also the intent of the Legislature that in cases~~
20 ~~where violations are not committed knowingly, the state use~~
21 ~~appropriate restraint in the exercise of its discretion as to whether~~
22 ~~enforcement action should include monetary penalties.~~

23 ~~SEC. 18. Section 1831 of the Water Code is amended to read:~~

24 ~~1831. (a) When the board determines that any person is~~
25 ~~violating, or threatening to violate, any requirement described in~~
26 ~~subdivision (d), the board may issue an order to that person to~~
27 ~~cease and desist from such violation.~~

28 ~~(b) The cease and desist order shall require such person to~~
29 ~~comply forthwith or in accordance with a time schedule set by the~~
30 ~~board.~~

31 ~~(c) The board may issue a cease and desist order only after~~
32 ~~notice and an opportunity for hearing pursuant to Section 1834.~~

33 ~~(d) The board may issue a cease and desist order in response to~~
34 ~~a violation or threatened violation of any of the following:~~

35 ~~(1) The prohibition set forth in Section 1052 against~~
36 ~~unauthorized diversion or use of water subject to this division.~~

37 ~~(2) Any term or condition of a permit, license, certification, or~~
38 ~~registration issued under this division.~~

39 ~~(3) Any order or decision of the board issued under this part,~~
40 ~~Section 275, Part 1 (commencing with Section 1000) of this~~

1 ~~division, Part 2 (commencing with Section 10500) of Division 6;~~
2 ~~Article 7 (commencing with Section 13550) of Chapter 7 of~~
3 ~~Division 7, or the public trust doctrine.~~

4 ~~SEC. 19. Section 1832 of the Water Code is amended to read:~~

5 ~~1832. Cease and desist orders of the board shall be effective~~
6 ~~upon the issuance thereof. The board may, after notice and~~
7 ~~opportunity for hearing, upon its own motion or upon receipt of an~~
8 ~~application from an aggrieved person, modify, revoke, or stay in~~
9 ~~whole or in part any cease and desist order issued pursuant to this~~
10 ~~chapter.~~

11 ~~SEC. 20. Section 1833 of the Water Code is repealed.~~

12 ~~SEC. 21. Section 1834 of the Water Code is amended to read:~~

13 ~~1834. (a) In the event that a violation of a requirement~~
14 ~~described in subdivision (d) of Section 1831 is occurring or~~
15 ~~threatening to occur, the board shall give notice by personal notice~~
16 ~~or certified mail, pursuant to which the party shall be informed that~~
17 ~~he or she may request a hearing not later than 20 days from the date~~
18 ~~on which the notice is received, to the person allegedly engaged in~~
19 ~~the violation. The notice shall contain a statement of facts and~~
20 ~~information that would tend to show the proscribed action, and~~
21 ~~notification of the requirements of subdivision (b).~~

22 ~~(b) Unless a written request for a hearing signed by or on behalf~~
23 ~~of the notified party is delivered to or received by mail by the board~~
24 ~~within 20 days after receipt of the notice, the board may adopt a~~
25 ~~cease and desist order, based on the statement of facts and~~
26 ~~information set forth in the notice, without a hearing.~~

27 ~~SEC. 22. Section 1845 of the Water Code is amended to read:~~

28 ~~1845. (a) Upon the failure of any person to comply with a~~
29 ~~cease and desist order issued by the board pursuant to this chapter,~~
30 ~~the Attorney General, upon the request of the board, shall petition~~
31 ~~the superior court for the issuance of prohibitory or mandatory~~
32 ~~injunctive relief as appropriate, including a temporary restraining~~
33 ~~order, preliminary injunction, or permanent injunction.~~

34 ~~(b) (1) Any person or entity who violates a cease and desist~~
35 ~~order issued pursuant to this chapter may be liable for a sum not~~
36 ~~to exceed one thousand dollars (\$1,000) for each day in which the~~
37 ~~violation occurs.~~

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

1 ~~(3) Civil liability may be imposed administratively by the~~
2 ~~board pursuant to Section 1055.~~

3 ~~(c) In determining the appropriate amount, the court, or the~~
4 ~~board, as the case may be, shall take into consideration all relevant~~
5 ~~circumstances, including, but not limited to, the extent of harm~~
6 ~~caused by the violation, the nature and persistence of the violation,~~
7 ~~the length of time over which the violation occurs, and the~~
8 ~~corrective action, if any, taken by the violator.~~

9 ~~(d) All funds recovered pursuant to this section shall be~~
10 ~~transferred to the General Fund of the state.~~

11 ~~SEC. 23. Section 1850 of the Water Code is amended to read:~~
12 ~~1850. Any factual or legal determinations made pursuant to a~~
13 ~~cease and desist order shall be conclusive and shall preclude any~~
14 ~~party to the order from raising such issues in any subsequent~~
15 ~~administrative proceeding.~~

SENATE COMMITTEE ON AGRICULTURE AND WATER RESOURCES
Jim Costa, Chair

RECEIVED
JUN 20 2001
CAPITOL OFFICE

BACKGROUND INFORMATION REQUEST

Measure: AB 946

Author : Assembly Member Kelley

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
STATE WATER RESOURCES CONTROL BOARD

Eric Feller @ 341-5252 or Andy Sawyer @ 341-5191

- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.

SB 849 (Kelley) Ch. 323, Statutes of 1997. Authorized the SWRCB to take action to expedite water application processing.

- c. Has there been an interim committee report on the bill? If so, please identify the report.

NO

2. What is the problem or deficiency in the present law which this bill seeks to remedy? The provisions on cease & desist orders & changes in point of discharge of treated wastewater were enacted in 1980 (Ch 933, Stat of 1980) to implement recommendations of the Commission, chaired by former Chief Justice Donald Wright and including leading authorities on water rights, established to review and recommend change in CA water rights law. (Gov's Commission to Review CA Water Rights Law, Final Report 1978)

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

SEE ATTACHED THREE PAGES

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill. (Attached)

5. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.

None Planned

6. List the witnesses you plan to have testify.

Eric Feller and Andy Sawyer with the SWRCB

RETURN THIS FORM TO: SENATE COMMITTEE ON AGRICULTURE AND WATER RESOURCES
Phone (916) 445-2206

em 406

STAFF PERSON TO CONTACT: Nancy Lucchesi Newbill 319-2442

AB 946

SUMMARY:

This bill would correct deficiencies in the State Water Resources Control Board's (SWRCB's) water rights cease and desist order authority, improve water right petition processing, and clarify that Water Code § 1211 only applies to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.

BACKGROUND:

The SWRCB administers the state's water rights and water quality control programs. Effective enforcement is important to both programs, yet the state's water right enforcement program is less effective than for water quality control.

PROBLEM:

Water Rights Enforcement: Based on the recommendations of the Governor's Commission to Review California Water Right Law, the Legislature enacted a statute in 1980 authorizing the SWRCB to issue cease and desist orders for water right violations. Although the statute said the state should take vigorous enforcement action, there have been obstacles to making effective use of the authority to issue and enforce cease and desist orders including limitations on the kinds of violations for which a cease and desist order may be issued, complex procedures for issuance of orders, and the inability to impose administrative civil liability for violations.

Water-Right Petition Process: Existing law requires that before the SWRCB approves a change in a permitted or licensed water right, the SWRCB must find that the change will not result in injury to other legal users of water. But many petitioners fail to provide the information needed to make this finding, or provide inadequate information

concerning the environmental impacts of the proposed change. Similarly, some protestants fail to provide the information necessary to properly evaluate their protests. This makes the current water right petition process long and subject to delays due to inadequate information, and delays on the part of the petitioner or protestants.

Treated Waste Water Change: Water Code § 1211 currently requires the owner of any waste water treatment plant to obtain the approval of the SWRCB prior to making any change in the point of discharge, place of use, or purpose of use of treated waste water. While these procedures provide protection of third party water right holders and environmental interests that might be adversely affected by reduction in streamflows, they also require review of many water recycling projects that pose no threat of these adverse impacts because they do not reduce streamflows.

ANALYSIS:

AB 846 would:

- Apply the provisions of the Water Code concerning water right application processing that were added by Chapter 323, Statutes of 1997 (SB 849, Kelley) to water right petition processing. The bill would authorize the SWRCB to request supplemental information from a petitioner or protestant that is reasonably necessary to evaluate the petition or protest, including information needed to demonstrate water availability and to comply with environmental laws. If the petitioner or protestant does not provide the information, the petition or protest may be canceled.
- Provide that the treated waste water change petition in Water Code § 1211 (that requires the owner of a waste water treatment plant to obtain the approval of the SWRCB before making any change in the point of discharge, place of use, or purpose of use of treated waste water) applies only to changes in the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.
- Clarify procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.
- Authorize the SWRCB to issue a cease and desist order to any person who the SWRCB determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the SWRCB, or prescribed orders or decisions of the SWRCB. Additionally the bill would authorize the SWRCB to impose that liability administratively on any person who violates a cease and desist order.
- Declare legislative intent that the state take action to enforce certifications and registrations to appropriate water and to enforce SWRCB orders and decisions.

FACT SHEET
WATER RIGHTS AND WATER ENFORCEMENT STATE WATER RESOURCES CONTROL BOARD
(SWRCB) LEGISLATION

IDENTIFICATION OF PROBLEM

This proposed legislation takes into consideration information from two sources to improve California's water rights and enforcement statute. The first source was information gathered from a SWRCB workshop for the water community to provide input on ways to improve the water right process. The second source was recommendations of the Governor's Commission to Review California Water Right Law, regarding cease and desist orders for water right violations. Although the SWRCB is now authorized to issue cease and desist orders for water right violations, this proposed legislation will remove any obstacles to effective use of cease and desist orders.

PROPOSED SOLUTION

The proposed water rights and enforcement statute changes will do the following:

- Apply the provisions of the Water Code concerning water right application processing that were added by Chapter 323, Statutes of 1997 (SB 849, Kelley) to water right petition processing.
- Clarify that the treated waste water change petition in Water Code § 1211 applies only to changes the discharge or use of treated waste water that result in reduced flow in any portion of the watercourse.
- Provide that, except in cases where the SWRCB decision or order is used under delegated authority, reconsideration is not required to be exhausted before the person aggrieved by the SWRCB decision or order may file a petition for a writ of mandate.
- Clarify procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.
- Authorize the SWRCB to issue a cease and desist order to any person who the SWRCB determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the SWRCB, or prescribed orders or decisions of the SWRCB. Additionally the bill would specify that civil liability may be imposed by the superior court and would authorize the SWRCB to impose that liability administratively on any person who violates a cease and desist order.
- Declare legislative intent that the state take action to enforce certifications and registrations to appropriate water and to enforce the orders and decisions of the SWRCB.

PROPONENTS/OPPONENTS

Proponents: This proposal should be received favorably by many of the larger water interests, including the Association of California Water Agencies.

Opponents: Some of the smaller public interest groups, such as the California Sportfishing Protective Alliance, may not like this proposal. However, the SWRCB has tried to accommodate their concerns in these proposed statute changes.

AB 946 (Kelley)

None

File Item #

Assembly Floor: 47-11

(AYE: Bates, Bogh, Dickerson, Kelley, La Suer, Maldonado, Robert Pacheco, Richman, Wyland, Zettel; NO: Ashburn, Briggs, Bill Campbell, Leslie, Mountjoy, Rod Pacheco, Runner, Strickland Wyman; ABS: Aanestad, John Campbell, Cogdill, Cox, Daucher, Harman, Hollingsworth, Leach, Leonard, Maddox, Pescetti)

Senate Ag & Water Resources: 7-0

(AYE: Battin; ABS: Poochigian, Johannessen, Monteith)

Senate Judiciary: 4-2

(NO: Haynes, Ackerman)

Vote requirement: 21

Version Date: 7/2/01

Quick Summary

Expands the ability of the State Water Resources Control Board to impose civil liability for violations of cease and desist orders and makes changes to their authority to issue licenses and permits for water appropriation.

Fiscal Effect

MINOR STATE COSTS. Minor costs to the State Water Resources Control Board, which would be offset by increased fines and penalties.

Fiscal Consultant: Alex Alanis



Digest

Expands the State Water Resources Control Board's ("Board") ability to impose civil liability for violation of a cease and desist order by adding any "entity" to those on whom civil liability may be imposed.

Prohibits civil liability from being twice imposed by both the Board and the superior court if liability would be imposed for the same act or omission to act.

Requires the following information to be included in a petition for change of place of diversion, change of use, or change of purpose of a license or permit of appropriation to the Board: the name of the petitioner; a description of the requested amendments to the application; sufficient information to show a likelihood that the petitioned for change will not harm any legal user of water; and any other information required by applicable regulations.

Establishes procedures for filing a written protest by any interested party against approval of a petition for change of place of diversion, use, or purpose, including a reasonable time for compliance. If the petitioner is unable to provide the information within the time specified by the Board, the petition is be cancelled.

Allows any "interested person" to file a protest against approval of a change to an application, permit license, and requires the following to be included in the protest: the name and address of the protestant, a clear description of the protestant's objections; and any other information required by applicable regulations.

Requires the petitioner and the protestant to make a good faith effort to resolve the dispute within 180 days.

Prohibits the Board from canceling either a petition or a protest if the reason the information is not provided in a timely manner is because it is not within the control of the petitioner or protestant.

Permits the Board to attach conditions to an approval of a petition for the change of place of diversion, use, or purpose.

Provides that a person filing a court challenge to a decision or order of the Board does not have to exhaust the administrative remedy of reconsideration by the Board, except where the decision or order was made under authority delegated by the Board to an officer or employee.

Background

The Board has jurisdiction over all appropriative water rights granted after January 1, 1914. One of the most significant duties is the administration of the state's water rights system. The Board has established a system to administer water rights that is based on an application, permit and license model. To gain a perfected appropriative water right a petitioner must first apply to the Board for a water right. The application is reviewed and either approved or denied. If the application is approved, a permit is issued. The permit holder has a specified period of time within which to put the water to "reasonable and beneficial use." If the permit's conditions are satisfied, the permit may mature into a license.

Under existing law, the Board may make changes to the permitted place of water diversion, the place of use of the water, or the use of the water as allowed by the water right application, permit or license. Should an applicant, permit holder or license holder wish to make a change in the point of diversion or purpose or place of use allowed under their water right, they must first petition the Board for approval to make the change. The Board must consider several

aspects before granting or denying a change. The Board must determine that there is no injury to any other legal user of water, they must provide notice of the change request by publication, and the petitioner must notify the Department of Fish and Game. In addition, the Board must conduct a field investigation and has the right to request information from the petitioner related to the change. Minor petitions for change (less than 3 cubic feet per second or less than 200 acre-feet per year of storage) do not require the approval of the Board, and may be approved by the Board's staff.

The Board also has enforcement authority to ensure that those holding water rights are using water within the terms of their application, permit or license. The Board may issue a preliminary cease and desist order to any person that is violating the terms of their application, permit, or license. If the infraction is not corrected the preliminary cease and desist order may mature into a final cease and desist order. The Attorney General, at the request of the Board, may seek a court order for temporary restraining order, preliminary injunction or permanent injunction. The Attorney General may also seek imposition of a fine not to exceed \$1,000 per day for each day the infraction occurs. Water right holders that receive a cease and desist order may appeal to the superior court for review.

Analysis

Sponsors state this bill is the result of a process in which Board convened a Water Rights Working Group and listened to stakeholders about how to improve and streamline the existing water rights application process. This bill is intended to correct deficiencies in Board's enforcement mechanisms, improve processing of water rights petitions, and clarify that Water Code Section 1211 only applies to changes in the discharge or use of treated wastewater that result in reduced flow in a watercourse.

Cease and Desist Orders: The most controversial provision was removed in this version, which allowed the Board to issue cease and desist orders for "threatened violations" of a permitted use. However, the Board's ability to impose civil liability for violation of a cease and desist order upon persons expanded by adding any "entity" to those on whom civil liability may be imposed. **Should the Board's power to impose civil liability be expanded?**

Petition Process: This bill provides the Board with sufficient information in the petition process to assess whether a change in diversion or use of water will result in injury to other users of water, which will expedite the petition process and avoid delays in reaching decisions.

No Approval When There is No Change in Impact: Water Code Section 1211 requires the owner of a wastewater treatment plant to obtain the approval of the Board before making changes in the point of discharge, place of use, or

purpose of use of treated water. The sponsor states this rule is too broad, and leads to the review of changes that do not result in a decrease in flow and pose no threat of adverse impacts to third-party water rights holders and environmental interests. This bill clarifies that changes with no impact need not be reviewed.

Good Faith Effort: This bill requires the petitioner and the protestant to make a good faith effort to resolve the dispute within 180 days. **Is six months an appropriate amount of time to resolve a dispute?**

Support & Opposition Received

Support: State Water Resources Control Board (sponsor), Sierra Club-California.

Opposition: None received.

Consultant: *Paul Bauer/Mike Petersen*

AB 946 (Kelley)
SENATE AGRICULTURE AND WATER COMMITTEE
JULY 3, 2001

AB 946 IS SPONSORED BY THE ADMINISTRATION. IT IMPROVES WATER RIGHT PETITION PROCESSING, AND CLARIFIES WATER CODE PROVISIONS REGARDING DISCHARGE OR USE OF TREATED WASTEWATER.

- FIRST, THIS BILL EXTENDS THE WATER RIGHT APPLICATION PROCESSING IMPROVEMENTS MADE BY MY 1997 BILL, SB 849, TO WATER RIGHT PETITION PROCESSING. AB 946 HELPS EXPEDITE WATER RIGHT PETITION PROCESSING BY AUTHORIZING THE STATE WATER BOARD TO REQUEST NECESSARY SUPPLEMENTAL INFORMATION NECESSARY TO EVALUATE THE PETITION OR PROTEST, AND ALLOWS THE STATE WATER BOARD TO CANCEL THE PETITION OR PROTEST IF THE PARTY DOES NOT PROVIDE THE INFORMATION. IT ALSO CLARIFIES PROCEDURES FOR PETITIONING TO CHANGE THE POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF WATER THAT IS DESCRIBED IN AN APPLICATION, PERMIT OR LICENSE.
- AB 946 WOULD ALSO ELIMINATE UNNECESSARY STATE BOARD REVIEW OF WATER RECYCLING AND OTHER PROJECTS THAT POSE NO THREAT OF ADVERSE ENVIRONMENTAL IMPACTS AND DO NOT REDUCE STREAMFLOWS.
- I HAVE WITH ME TODAY STAFF FROM THE STATE WATER BOARD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

SENATE AGRICULTURE & WATER RESOURCES COMMITTEE

Senator Jim Costa, Chairman

BILL NO: AB 946

AUTHOR: Kelley

VERSION: 6/29/01

HEARING: 7/3/01

FISCAL: Yes

CONSULTANT: Brent Walthall

Water Rights

BACKGROUND AND EXISTING LAW

The State Water Resources Control Board (the Board) was established by the Legislature on January 1, 1914 and has jurisdiction over all appropriative water rights granted after that date. One of the most significant duties assigned to the Board is administration of the state's water rights system. The Board has established a system to administer water rights that is based on an application, permit and license model. To gain a perfected appropriative water right a petitioner must first apply to the Board for a water right. The Board reviews the application and approves or denies it. If the application is approved, a permit is issued. The permit holder has a specified period of time within which to put the water to "reasonable and beneficial use" as required by the Article X of the state constitution. If the permit's conditions are satisfied, the permit may mature into a license.

Under existing law the Board may make changes to the permitted place of water diversion, the place of use of the water, or the use of the water as allowed by the water right application, permit or license. Should an applicant, permit holder or license holder wish to make a change in the point of diversion or purpose or place of use allowed under their water right, they must first petition the Board for approval to make the change. The Board must consider several aspects before granting or denying a change. The Board must determine that there is no injury to any other legal user of water, they must provide notice of the change request by publication, and the petitioner must notify the Department of Fish and Game. In addition, the Board must conduct a field investigation and has the right to request information from the petitioner related to the change. Minor petitions for change (less than 3 cubic feet per second or less than 200 acre-feet per year of storage) do not require the approval of the Board, and may be approved by the Board's staff.

The Board also has enforcement authority to ensure that those holding water rights are using water within the terms of their application, permit or license. The Board may issue a preliminary cease and desist order to any person that is violating the terms of their application, permit, or license. If the infraction is not corrected the preliminary cease and desist order may mature into a final cease and desist order. The Attorney General, at the request of the Board, may seek a court order for temporary restraining order, preliminary injunction or permanent injunction. The Attorney General may also seek imposition of a fine not to exceed \$1,000 per day for each day the infraction occurs. Water right holders that receive a cease and desist order may appeal to the superior court for review.

PROPOSED LAW

This bill expands the Board's ability to impose civil liability for violation of a cease and desist order by adding any "entity" to those on whom civil liability may be imposed. The bill also prohibits civil liability from being twice imposed by both the Board and the superior court if the liability would be imposed for the same act or omission to act.

The measure clarifies that changes to permits for discharges for wastewater treatment plants are exempt from Board review if the discharge does not result in a decrease in flow in any portion of a water course.

The bill adds several sections to the Water Code that modify the way changes are made to water rights applications, permits and licenses. The bill would require specific information to be provided for petitions to change applications, permits, or licenses including: the name of the petitioner; a description of the requested amendments to the application permit, or license; sufficient information to show a likelihood that the petitioned for change will not harm any legal user of water; and any other information required by applicable regulations.

The bill would add a section allowing the Board to request additional information from anyone petitioning for a change to an application, permit or license and provide a reasonable time for compliance. If the petitioner is unable to provide the information within the time specified by the Board the petition would be cancelled.

The bill would allow any "interested person" to file a protest against approval of a change to an application, permit or license. The bill requires specific information to be included in the protest including: The name and address of the protestant, a clear description of the protestant's objections to the approval of the petition, and any other information required by applicable regulations. The Board must provide a reasonable period of time for the protestant to provide the information.

The bill would require the petitioner and the protestant to make a good faith effort to resolve the dispute within 180 days.

The bill would allow the Board to cancel either a petition or a protest if information is not provided within the time provided. A petition or protest could not be cancelled if the reason the information is not provided is because it is not within the control of the petitioner or protestant.

If a protest is based on alleged injury to another legal user of water then information concerning the protestant's historical, current, or proposed use of water is required. If the protest is based on allegations other than injury to a legal user of water then the Board may cancel the protest if it determines that the public review period has expired for the environmental documents related to the petition and there is no substantial evidence in light of the whole record to support the protest.

After a hearing the Board may approve or deny the petitioned for change.

COMMENTS

1. This bill provides much needed statutory clarity to a process that is largely determined by administrative policy. While the Board has developed a fairly well understood process for changes to water rights (at least by those attorneys the routinely practice before the Board) it does not benefit from the clarity of a statute establishing the process. This bill would provide that clarity by making the process for changes less based on administrative practice, and more firmly grounded in state law.
2. The Senate Committee on Rules requests that any do-pass motion include a re-referral of this bill to the Committee on Judiciary.

PRIOR ACTIONS

Assembly Floor	47-11
Assembly Appropriations	14-1
Assembly Judiciary	8-0
Assembly Water, Parks, and Wildlife	11-2

SUPPORT

State Water Resources Control Board (sponsor)

OPPOSITION

None Received

Yang, Michael

From: Eric Feller [EFeller@exec.swrcb.ca.gov]
Sent: Wednesday, July 11, 2001 10:15 AM
To: michael.yang@sen.ca.gov
Cc: Andy Sawyer
Subject: CEQA explanation

Clarification is needed in § 1126 to clarify that when the filing of a petition for reconsideration extends the statute of limitations for filing suit against the SWRCB, that extension encompasses causes of action based on the California Environmental Quality Act (CEQA). This clarification would codify the SWRCB's interpretation of existing law. (SWRCB Order WR 2000-02 at p. 45.) Notwithstanding the SWRCB's interpretation, some parties file two lawsuits against a single SWRCB decision - one immediately after the decision based on CEQA and a second after the SWRCB acts on their petitions for reconsideration based on other causes of action. These parties claim that if they waited until the administrative process was complete before filing suit they would risk having their CEQA causes of action dismissed. Although their concerns appear to be unwarranted, their premature litigation imposes a burden on the SWRCB and the courts that may be avoided if the proposed clarifying amendments are adopted.

Eric Feller
Legislative Analyst
State Water Resources Control Board
1001 I Street, 24th floor, Sacramento, CA 95814
ph. 916-341-5258 or 341-5251
fax. 916-341-5252
efeller@exec.swrcb.ca.gov

It is the province of knowledge to speak, and it is the privilege of wisdom to listen.
-- Oliver Wendell Holmes, Sr.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at: www.swrcb.ca.gov.



State Water Resources Control Board



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Executive Office

1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 341-5621 • Web Site Address: <http://www.swrcb.ca.gov>

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>.*

JUL 16 2001

The Honorable Martha Escutia, Chair
Senate Committee on Judiciary
California State Senate
Room 5080, State Capitol
Sacramento, CA 95814

Dear Senator Escutia:

RE: AB 946 (KELLEY): WATER RIGHTS

I am writing on behalf of the State Water Resources Control Board (SWRCB), the sponsor of AB 946, to urge your support of this bill, which is scheduled for hearing on July 17. AB 946 would improve water right petition processing, and clarify that Water Code § 1211 only applies to changes in the discharge or use of treated wastewater that result in reduced flow in any portion of the watercourse.

To expedite water right petition processing, AB 946 would extend the water right application processing improvements made in 1997 (Ch. 323, SB 849, Kelley) to water right petition processing. The SWRCB would be authorized to request supplemental information from a petitioner or protestant that is necessary to evaluate the petition or protest. If the petitioner or protestant does not provide the information, the bill allows the SWRCB to cancel the petition or protest. The bill also clarifies procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.

Existing law requires the owner of a wastewater treatment plant to obtain SWRCB approval before making any change in the point of discharge, place of use, or purpose of use of treated wastewater. AB 946 would provide that the wastewater change petition applies only to changes in the discharge or use of treated wastewater that result in reduced flow in any portion of the watercourse.

California Environmental Protection Agency



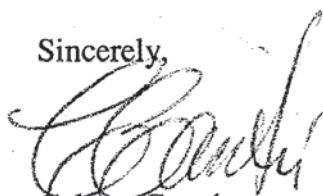
The Honorable Martha Escutia

- 2 -

JUL 16 2001

If you have any questions or wish to discuss the bill further, please feel free to contact me at 341-5615, or our Legislative Director, Tom Jones, at 341-5251.

Sincerely,



Celeste Cantú

Executive Director

cc. Assembly Member Dave Kelley
Members, Senate Judiciary Committee

AB 946 (Kelley)

File Item #

2 0

None

Assembly Floor: 47-11

(AYE: Bates, Bogh, Dickerson, Kelley, La Suer, Maldonado, Robert Pacheco, Richman, Wyland, Zettel; NO: Ashburn, Briggs, Bill Campbell, Leslie, Mountjoy, Rod Pacheco, Runner, Strickland Wyman; ABS: Aanestad, John Campbell, Cogdill, Cox, Daucher, Harman, Hollingsworth, Leach, Leonard, Maddox, Pescetti)

Senate Ag & Water Resources: 7-0

(AYE: Battin; ABS: Poochigian, Johannessen, Monteith)

Senate Judiciary: X-X

(AYE: NO: ABS:)

Vote requirement: 21

Version Date: 7/2/01

Quick Summary

Expands the ability of the State Water Resources Control Board to impose civil liability for violations of cease and desist orders and makes changes to their authority to issue licenses and permits for water appropriation.

Fiscal Effect

NO SIGNIFICANT STATE COSTS.

Unknown, probably minor, costs to LAFCO's to comply with the requirements of this measure. These costs would not be reimbursable.

Fiscal Consultant: Tom Sheehy

Digest

Expands the State Water Resources Control Board's ("Board") ability to impose civil liability for violation of a cease and desist order by adding any "entity" to those on whom civil liability may be imposed.

Prohibits civil liability from being twice imposed by both the Board and the superior court if liability would be imposed for the same act or omission to act.

Requires the following information to be included in a petition for change of place of diversion, change of use, or change of purpose of a license or permit of appropriation to the Board: the name of the petitioner; a description of the requested amendments to the application; sufficient information to show a

likelihood that the petitioned for change will not harm any legal user of water; and any other information required by applicable regulations.

Establishes procedures for filing a written protest by any interested party against approval of a petition for change of place of diversion, use, or purpose, including a reasonable time for compliance. If the petitioner is unable to provide the information within the time specified by the Board, the petition is be cancelled.

Allows any "interested person" to file a protest against approval of a change to an application, permit license, and requires the following to be included in the protest: the name and address of the protestant, a clear description of the protestant's objections; and any other information required by applicable regulations.

Requires the petitioner and the protestant to make a good faith effort to resolve the dispute within 180 days.

Prohibits the Board from canceling either a petition or a protest if the reason the information is not provided in a timely manner is because it is not within the control of the petitioner or protestant.

Permits the Board to attach conditions to an approval of a petition for the change of place of diversion, use, or purpose.

Provides that a person filing a court challenge to a decision or order of the Board does not have to exhaust the administrative remedy of reconsideration by the Board, except where the decision or order was made under authority delegated by the Board to an officer or employee.

Background

The Board has jurisdiction over all appropriative water rights granted after January 1, 1914. One of the most significant duties is the administration of the state's water rights system. The Board has established a system to administer water rights that is based on an application, permit and license model. To gain a perfected appropriative water right a petitioner must first apply to the Board for a water right. The application is reviewed and either approved or denied. If the application is approved, a permit is issued. The permit holder has a specified period of time within which to put the water to "reasonable and beneficial use." If the permit's conditions are satisfied, the permit may mature into a license.

Under existing law, the Board may make changes to the permitted place of water diversion, the place of use of the water, or the use of the water as allowed

by the water right application, permit or license. Should an applicant, permit holder or license holder wish to make a change in the point of diversion or purpose or place of use allowed under their water right, they must first petition the Board for approval to make the change. The Board must consider several aspects before granting or denying a change. The Board must determine that there is no injury to any other legal user of water, they must provide notice of the change request by publication, and the petitioner must notify the Department of Fish and Game. In addition, the Board must conduct a field investigation and has the right to request information from the petitioner related to the change. Minor petitions for change (less than 3 cubic feet per second or less than 200 acre-feet per year of storage) do not require the approval of the Board, and may be approved by the Board's staff.

The Board also has enforcement authority to ensure that those holding water rights are using water within the terms of their application, permit or license. The Board may issue a preliminary cease and desist order to any person that is violating the terms of their application, permit, or license. If the infraction is not corrected the preliminary cease and desist order may mature into a final cease and desist order. The Attorney General, at the request of the Board, may seek a court order for temporary restraining order, preliminary injunction or permanent injunction. The Attorney General may also seek imposition of a fine not to exceed \$1,000 per day for each day the infraction occurs. Water right holders that receive a cease and desist order may appeal to the superior court for review.

Analysis

Sponsors state this bill is the result of a process in which Board convened a Water Rights Working Group and listened to stakeholders about how to improve and streamline the existing water rights application process. This bill is intended to correct deficiencies in Board's enforcement mechanisms, improve processing of water rights petitions, and clarify that Water Code Section 1211 only applies to changes in the discharge or use of treated wastewater that result in reduced flow in a watercourse.

Cease and Desist Orders: The most controversial provision was removed in this version, which allowed the Board to issue cease and desist orders for "threatened violations" of a permitted use. However, the Board's ability to impose civil liability for violation of a cease and desist order upon persons expanded by adding any "entity" to those on whom civil liability may be imposed. **Should the Board's power to impose civil liability be expanded?**

Petition Process: This bill provides the Board with sufficient information in the petition process to assess whether a change in diversion or use of water will

result in injury to other users of water, which will expedite the petition process and avoid delays in reaching decisions.

No Approval When There is No Change in Impact: Water Code Section 1211 requires the owner of a wastewater treatment plant to obtain the approval of the Board before making changes in the point of discharge, place of use, or purpose of use of treated water. The sponsor states this rule is too broad, and leads to the review of changes that do not result in a decrease in flow and pose no threat of adverse impacts to third-party water rights holders and environmental interests. This bill clarifies that changes with no impact need not be reviewed.

Good Faith Effort: This bill requires the petitioner and the protestant to make a good faith effort to resolve the dispute within 180 days. **Is six months an appropriate amount of time to resolve a dispute?**

Support & Opposition Received

Support: State Water Resources Control Board (sponsor), Sierra Club-California.

Opposition: None received.

Consultant: *Paul Bauer/Mike Petersen*

SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2001-2002 Regular Session

AB 946	A
Assembly Member Kelley	B
As Amended July 2, 2001	
Hearing Date: July 17, 2001	9
Water Code	4
MTY	6

SUBJECT

Water Rights

DESCRIPTION

This bill would make various changes to the procedures of the State Water Resources Control Board (SWRCB). It would also clarify existing law regarding when the Board's decisions can be appealed to the state courts by stating that reconsideration before the Board is not required prior to court appeals except when the decision has been made under authority delegated to an officer or employee of the Board.

BACKGROUND

The procedures of the SWRCB are generally within the jurisdiction of the Committee on Agriculture and Water Resources. This analysis will focus only on the provisions of the bill which pertain to the jurisdiction of this committee. Those provisions relate when SWRCB decisions can be challenged in court.

CHANGES TO EXISTING LAW

Existing law provides that any party may file a petition for a writ of mandate for review of a decision of the SWRCB within 30 days of that decision.

Existing law further provides that failure to seek reconsideration before the board is not a bar to judicial review "unless reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board." Existing law extends the time for filing a petition for a writ of mandate if board reconsideration is sought.

This bill would clarify existing language regarding when board reconsideration is required before judicial review by stating that reconsideration before the Board

(more)

is not required prior to court appeals except when the decision has been made under authority delegated to an officer or employee of the Board.

This bill would also specify that extensions to the time for challenging a SWRCB decision in court while seeking reconsideration before the Board also apply to court challenges under the California Environmental Quality Act (CEQA).

COMMENT

1. Need for the bill's provisions regarding judicial review of SWRCB decisions

The bill's supporters state that the provisions regarding judicial review of SWRCB decisions are necessary to 1) eliminate confusion in current law over when board reconsideration is required before judicial review and 2) whether the extension in time to file for a writ of mandate applies to CEQA actions.

With regard to the reconsideration issue, administrative law generally requires that all administrative remedies be exhausted prior to judicial review of agency action. Existing law specifies that requesting reconsideration of a SWRCB decision is not an administrative remedy that needs to be exhausted prior to seeking judicial review of a SWRCB decision, except when "reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board." The apparent intent of existing language is to require that decisions made by subordinate officers or employees of the SWRCB be reviewed by the Board itself prior to judicial review. However, the bill's supporters state that the "higher level of review" language is causing minor confusion that is resolved by the language of the bill.

With regard to the CEQA issue, the bill's supporters state that a California appellate court decision has caused some confusion over whether the extension in time during board reconsideration for seeking judicial review applies to challenges to SWRCB decision under CEQA. Section 21167 of CEQA permits parties to challenge an agency's determination of a project's impact on the environment, the validity of an environmental impact report relied upon to make a decision, or any agency decision for failure to comply with CEQA. Generally speaking, these challenges must be filed within 30-35 days of an agency decision. In *Cmte. for a Progressive Giloy v. State Water Resources Control Board*, 192 Cal.App.3d 847 (3rd Appellate District 1987), the court held these specific statute of limitations in CEQA should apply over more general statute of limitations provisions in another environmental law.

Some parties with interests before the SWRCB feel that this decision requires them to file for judicial review under CEQA even if they are seeking Board reconsideration, for fear that the extension in time provided for in the Water

Code is trumped by the specific statutes of limitations contained in CEQA. The SWRCB has issued an order stating that its interpretation of existing law is that the extension does apply to CEQA actions; however, some parties continue to file CEQA suits immediately for fear that the courts will disagree with SWRCB's interpretation. The bill's supporters argue that this bill would clear up any ambiguity as to whether the extension applies to CEQA suits.

2. Stated goals appear to be accomplished in bill

Existing language regarding Board reconsideration of decisions made by subordinate officers or employees appears to have the same effect as the language contained in the bill. The bill states that:

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.

This language is simpler and easier to interpret than existing law, and makes no substantive change to existing law.

The bill's language regarding CEQA language also clarifies existing law and resolves any ambiguity as to when Board decision can be challenged under CEQA. By explicitly providing that CEQA suits are covered by an extension when Board reconsideration is requested, the bill would give parties the choice of filing a CEQA challenge without Board reconsideration (except when the decision is made by a Board subordinate) or waiting until after reconsideration.

3. Bill states that it makes no changes to existing law

The bill contains a statement that the changes it is making to the provisions just described do "not constitute a change in, but [are] declaratory of, existing law." This statement is intended to ensure that individuals who relied on SWRCB's interpretation of existing law and decided not to file suits under CEQA do not find their suits dismissed on the argument that passage of this bill indicates that SWRCB's previous interpretation was incorrect.

The statement may also help prevent potential future problems in interpreting the law by providing judges with guidance that all the bill seeks to do is ensure that current practice is clearly permissible under law.

Support: Governor Gray Davis; Sierra Club; Planning and Conservation League

Opposition: None Known

HISTORY

Source: State Water Resources Control Board

Related Pending Legislation: None Known

Prior Legislation: None Known

Prior Vote: Assembly Cmte. on Water, Parks & Wildlife (11-2)

Assembly Judiciary Cmte. (8-0)

Assembly Appropriations Cmte. (14.-1)

Assembly Floor (47-11)

Senate Cmte. on Agriculture and Water Resources (7-0)

AMENDMENT DATE: RN 0119093
 POSITION: Neutral
 SPONSOR: State Water Resources Control Board (CEPA 01-14)

BILL NUMBER: AB 946
 AUTHOR: D. Kelley

BILL SUMMARY: Water Rights

This bill, the outgrowth of various stakeholder workshops, would make changes to the Water Resources Control Board's (Water Board's) enforcement authority and clarify existing law.

Specifically, the bill would: specify water rights petition requirements, exempt a wastewater treatment facility owner from obtaining approval for a change in the point of discharge of treated wastewater if the change does not result in decreasing the flow in any portion of a watercourse, and codify existing practice allowing for an extension for filing an action against the Water Board in California Environmental Quality Act proceedings.

FISCAL SUMMARY

The net fiscal impact of expanding enforcement authority is unknown, but the Water Board estimates it would be minor. Any additional enforcement costs would be offset by fine revenues.

COMMENTS

The Water Board is responsible for issuing water rights permits and licenses, enforcing terms and conditions of permits and licenses, abating illegal diversions, and preventing waste or unreasonable use of water. Over the past several years, additional funding has been provided to address workload, but a sizable permitting backlog still exists. It is assumed that streamlining the water rights petition process would lead to greater efficiency.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the April 25, 2001 version include the following, which do not change our position:

- Remove Water Board's authority to issue a cease and desist order to enforce the terms and conditions of permits and licenses.
- No longer allow for civil liability to be imposed by the superior court or the Water Board.
- Reinstate a State court's authority to exercise independent judgment related to the judicial review of a cease and desist order.
- Make minor language changes.

(Continued)

Analyst/Principal (0622) R. Dean <i>Robert Dean</i>	Date 8/7/01	Program Budget Manager Fred Klass <i>John Klass</i>	Date 8/7/01
Department Deputy Director			Date

Governor's Office:	By:	Date:	Position Noted _____
			Position Approved _____
			Position Disapproved _____

BILL ANALYSIS

Form DF-43 (Rev 03/95 Buff)

AUTHOR

AMENDMENT DATE

BILL NUMBER

D. Kelley

RN 0119093

AB 946

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2001-2002	FC	2002-2003	FC	2003-2004	
1256/Othr Reg Fee	RV	No		-----	No/Minor Fiscal Impact	-----			0001
3940/SWRCB	SO	No		-----	No/Minor Fiscal Impact	-----			0001

AMENDED IN SENATE AUGUST 20, 2001

AMENDED IN SENATE JULY 2, 2001

AMENDED IN ASSEMBLY APRIL 25, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 946

Introduced by Assembly Member Kelley

February 23, 2001

An act to amend Sections 1055, 1055.2, 1122, 1126, 1211, and 1704 of, and to add Sections 1701.1, 1701.2, 1701.3, 1701.4, 1703.1, 1703.2, 1703.3, 1703.4, 1703.5, and 1703.6 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as amended, Kelley. Water rights.

(1) Existing law specifies procedures under which a person may be subject to administrative civil liability for unauthorized diversion or use of water. Existing law specifies procedures under which the State Water Resources Board may order a reconsideration of any of its decisions or orders on the filing of a petition for writ of mandate by any interested person.

This bill would expand these procedures to apply to any person or entity.

(2) Existing law authorizes any party aggrieved by any decision or order of the board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless

reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate.

(3) Existing law requires that the time for filing the petition for a writ of mandate described in (2) above be extended for any person who seeks reconsideration of the decision or order of the board.

Existing law, the California Environmental Quality Act (CEQA), requires that any action or proceeding to challenge certain acts or decisions of a public agency on the grounds of noncompliance with the act be commenced within certain time limits.

This bill would require that the time for filing any of these CEQA actions or proceedings against the board be extended for any person who seeks reconsideration of any decision or order of the board. The bill would provide that the amendment made by this bill, with respect to this provision, does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement 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.

(5) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the petition and would impose requirements in connection with the filing

of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

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

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

1 SECTION 1. Section 1055 of the Water Code is amended to
2 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 or Section
6 5107. The complaint shall allege the act or failure to act that
7 constitutes a trespass or violation, the provision of law authorizing
8 civil liability to be imposed, and the proposed civil liability.

9 (b) The complaint shall be served by personal notice or
10 certified mail, and shall inform the party ~~so~~ served that the party
11 may request a hearing ~~within 20 days after the party has been~~ *not*
12 *later than 20 days from the date the party was served.* The hearing
13 shall be before a member of the board as it may specify.

14 (c) After any hearing, the member shall report a proposed
15 decision and order to the board and shall supply a copy to the party
16 served with the complaint, the board's executive director, and any
17 other person requesting a copy. The member of the board acting
18 as hearing officer may sit as a member of the board in deciding the
19 matter. The board, after making an independent review of the
20 record and taking any additional evidence as may be necessary ~~and~~
21 *that* could not reasonably have been offered before the hearing
22 officer, may adopt, with or without revision, the proposed decision
23 and order.

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

1 SEC. 2. Section 1055.2 of the Water Code is amended to read:
2 1055.2. No person or entity shall be subject to both civil
3 liability imposed under Section 1055 and civil liability imposed by
4 the superior court under subdivision (d) of Section 1052 for the
5 same act or failure to act.

6 SEC. 3. Section 1122 of the Water Code is amended to read:
7 1122. The board may order a reconsideration of all or part of
8 a decision or order on the board's own motion or on the filing of
9 a petition of any interested person or entity. The petition shall be
10 filed not later than 30 days from the date ~~on which~~ the board adopts
11 a decision or order. The authority of the board to order a
12 reconsideration on its own motion shall expire 30 days after it has
13 adopted a decision or order. The board shall order or deny
14 reconsideration on a petition therefor not later than 90 days from
15 the date ~~on which~~ the board adopts the decision or order.

16 SEC. 4. Section 1126 of the Water Code is amended to read:
17 1126. (a) It is the intent of the Legislature that all issues
18 relating to state water law decided by the board be reviewed in state
19 courts, if a party seeks judicial review. It is further the intent of the
20 Legislature that the courts assert jurisdiction and exercise
21 discretion to fashion appropriate remedies pursuant to Section 389
22 of the Code of Civil Procedure to facilitate the resolution of state
23 water rights issues in state courts.

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

38 (c) Section 1094.5 of the Code of Civil Procedure shall govern
39 judicial proceedings under this section. For the purposes of
40 subdivision (c) of Section 1094.5 of the Code of Civil Procedure,

1 the court shall exercise its independent judgement on the evidence
2 in any case involving the judicial review of a cease and desist order
3 issued pursuant to Article 2 (commencing with Section 1831) of
4 Chapter 12 of Part 2 of Division 2, and in any other case in which
5 the court is authorized by law to exercise its independent
6 judgement on the evidence.

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

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

19 SEC. 5. Section 1211 of the Water Code is amended to read:

20 1211. (a) Prior to making any change in the point of
21 discharge, place of use, or purpose of use of treated wastewater, the
22 owner of any wastewater treatment plant shall obtain approval of
23 the board for that change. The board shall review ~~such~~ *the* changes
24 pursuant to the provisions of Chapter 10 (commencing with
25 Section 1700) of Part 2 of Division 2.

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

29 SEC. 6. Section 1701.1 is added to the Water Code, to read:

30 1701.1. A petition for change filed after notice of an
31 application shall meet all of the following requirements:

32 (a) State the name and address of the petitioner.

33 (b) Be signed by the petitioner, or the petitioner's agent or
34 attorney.

35 (c) Set forth amendments to the application or an amended
36 application reflecting the proposed change, including any
37 information necessary for the amended application to comply with
38 Section 1260.

1 (d) Include sufficient information to demonstrate a reasonable
2 likelihood that the proposed change will not injure any other legal
3 user of water.

4 (e) Contain other appropriate information and be in the form
5 required by applicable regulations.

6 SEC. 7. Section 1701.2 is added to the Water Code, to read:

7 1701.2. A petition for change in a permit or license shall meet
8 all of the following requirements:

9 (a) State the name and address of the petitioner.

10 (b) Be signed by the petitioner, or the petitioner's agent or
11 attorney.

12 (c) Include all information reasonably available to the
13 petitioner, or that can be obtained from the Department of Fish and
14 Game, concerning the extent, if any, to which fish and wildlife
15 would be affected by the change, and a statement of any measures
16 proposed to be taken for the protection of fish and wildlife in
17 connection with the change.

18 (d) Include sufficient information to demonstrate a reasonable
19 likelihood that the proposed change will not injure any other legal
20 user of water.

21 (e) Contain other appropriate information and be in the form
22 required by applicable regulations.

23 SEC. 8. Section 1701.3 is added to the Water Code, to read:

24 1701.3. (a) After a petition is filed, the board may request
25 additional information reasonably necessary to clarify, amplify,
26 correct, or otherwise supplement the information required to be
27 submitted under this article. The board shall provide a reasonable
28 period for submitting the information.

29 (b) The additional information may include, but ~~is not~~ *need not*
30 *be* limited to, any of the following:

31 (1) Information needed to demonstrate that the change will not
32 injure any other legal user of water.

33 (2) Information needed to demonstrate that the change will
34 comply with any applicable requirements of the Fish and Game
35 Code or the federal Endangered Species Act of 1973 (16 U.S.C.
36 Sec. 1531 et seq.).

37 (3) Information needed to comply with Division 13
38 (commencing with Section 21000) of the Public Resources Code.

39 SEC. 9. Section 1701.4 is added to the Water Code, to read:

1 1701.4. If, within the period provided, the petitioner does not
2 provide the information requested pursuant to Section 1701.3, the
3 board shall cancel the petition, unless, for good cause shown, the
4 board allows additional time ~~in which~~ to submit the requested
5 information.

6 SEC. 10. Section 1703.1 is added to the Water Code, to read:

7 1703.1. Any interested person, within the time allowed in the
8 notice of petition, or within the time the board may allow for good
9 cause shown, may file with the board a written protest against
10 approval of the petition.

11 SEC. 11. Section 1703.2 is added to the Water Code, to read:

12 1703.2. The protest shall meet all of the following
13 requirements:

14 (a) State the name and address of the protestant.

15 (b) Be signed by the protestant, or the protestant's agent or
16 attorney.

17 (c) Clearly and specifically set forth the protestant's objections
18 to the approval of the petition, and state the bases for these
19 objections.

20 (d) Contain other appropriate information and be in the form
21 required by applicable regulations.

22 (e) Be served on the petitioner by the protestant by mailing a
23 duplicate copy of the protest to the petitioner or through service
24 undertaken in another manner determined to be adequate by the
25 board.

26 SEC. 12. Section 1703.3 is added to the Water Code, to read:

27 1703.3. The board may request from the protestant additional
28 information reasonably necessary to clarify, amplify, correct, or
29 otherwise supplement the information required to be submitted
30 pursuant to Section 1703.2. The board shall provide a reasonable
31 period for submitting the information, and may allow additional
32 time for good cause shown.

33 SEC. 13. Section 1703.4 is added to the Water Code, to read:

34 1703.4. The protestant and the petitioner shall make a good
35 faith effort to resolve the protest not later than 180 days from the
36 date ~~on which~~ the period provided pursuant to Section 1703.1
37 expires. For good cause, the board may allow additional time for
38 the protestant and the ~~applicant~~ *petitioner* to attempt to resolve the
39 protest.

40 SEC. 14. Section 1703.5 is added to the Water Code, to read:

1 1703.5. The board may request from the protestant or the
2 petitioner additional information that the board determines is
3 reasonably necessary to attempt to resolve the protest. The board
4 shall provide a reasonable period for submitting the information,
5 and may allow additional time for good cause shown.

6 SEC. 15. Section 1703.6 is added to the Water Code, to
7 read:

8 1703.6. (a) The board may cancel a protest or petition for
9 failure to provide information requested by the board under this
10 article within the period provided.

11 (b) Except as provided in subdivisions (c) and (d), ~~a protest~~
12 ~~shall not be canceled~~ *the board may not cancel a protest* for failure
13 to submit information not in the possession or under the control of
14 the protestant if the protest meets the requirements of Section
15 1703.2 and the petitioner is or could be required to submit the
16 information under Section 1701.1, 1701.2, and 1701.3.

17 (c) If a protest is based on injury to a legal user of water, the
18 board may cancel the protest if the protestant fails to submit any
19 of the following information requested by the board:

20 (1) Information that the protestant is required to submit to the
21 board to comply with Part 5.1 (commencing with Section 5100)
22 during any period after the protest is filed.

23 (2) Information that is reasonably necessary to determine if the
24 protestant has a valid water right.

25 (3) Information concerning the protestant's historical, current,
26 or proposed future diversion and use of water that is reasonably
27 necessary to determine if the proposed change will result in injury
28 to the protestant's exercise of its water right.

29 (d) If the protest is based on an allegation other than injury to
30 a legal user of water, the board may cancel the protest for failure
31 to submit information requested by the board if the board
32 determines both of the following:

33 (1) The public review period has expired for any draft
34 environmental document or negative declaration required to be
35 circulated for public review and comment pursuant to Division 13
36 (commencing with Section 21000) of the Public Resources Code.

37 (2) In the absence of the requested information, there is no
38 substantial evidence in light of the whole record to support the
39 allegation.

1 (e) If a protest is subject to both subdivisions (c) and (d), the
2 part of the protest subject to subdivision (c) may be canceled
3 pursuant to subdivision (c) and the part of the protest subject to
4 subdivision (d) may be canceled pursuant to subdivision (d).

5 SEC. 16. Section 1704 of the Water Code is amended to read:

6 1704. (a) The board, after a hearing, may approve with
7 conditions, or deny, a petition.

8 (b) Notice of hearing shall be given by mailing the notice not
9 less than 20 days before the date of hearing to the petitioner and
10 to any protestant by registered mail.

11 (c) (1) The board may, but is not required to, hold a hearing
12 prior to approving an unprotested petition, ~~or if the board~~.

13 (2) *The board may, but is not required to, hold a hearing if the*
14 *board determines that undisputed facts support the approval of the*
15 *petition and there is no disputed issue of material fact.*

16 ~~(2)~~

17 (3) The board may, but is not required to, hold a hearing prior
18 to denying a petition, if, after notice, the board determines that the
19 petition is defective, the petition fails to provide information
20 requested by the board, or undisputed facts support the denial of
21 the petition and there is no disputed issue of material fact.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

ASSEMBLY THIRD READING

AB 946 (Kelley)

As Amended August 20, 2001

Majority vote

WATER, PARKS & WILDLIFE 11-2JUDICIARY8-0

Ayes: Florez, Aroner, Calderon, Frommer,
Goldberg, Kehoe, Kelley, Leslie,
Pavley, Thomson, Wayne

Ayes: Steinberg, Robert Pacheco, Corbett,
Dutra, Harman, Longville, Shelley,
Wayne

Nays: Dickerson, Wyman

APPROPRIATIONS 14-1

Ayes: Migden, Bates, Lowenthal, Corbett,
Correa, Strom-Martin, Maldonado,
Robert Pacheco, Pavley, Simitian,
Thomson, Wesson, Wiggins, Zettel

Nays: Ashburn

SUMMARY: This bill makes changes to the State Water Resources Control Board's (SWRCB's) authority to issue licenses and permits for appropriation of water, and to enforce the terms of those licenses and permits. Specifically, this bill:

- 1) Requires prescribed information to be included in a petition for change of place of diversion, change of use, or change of purpose of a license or permit of appropriation, and authorizes SWRCB to request additional information.
- 2) Authorizes and establishes procedures for filing of a written protest by any interested party against approval of a petition for change of place of diversion, change of use, or change of purpose.
- 3) Provides that it is not necessary for the owner of a wastewater treatment plant to obtain approval from SWRCB for a change in the point of discharge, place of use, or purpose of use of treated wastewater, if the changes do not result in decreasing the flow of any portion of a watercourse.
- 4) Authorizes SWRCB to approve a petition for change of place of diversion, change of use, or change of purpose with conditions or to deny the petition.
- 5) Provides that a person filing a court challenge to a decision or order of the SWRCB does not have to exhaust the administrative remedy of reconsideration by the board, except where the decision or order was made under authority delegated by the board to an officer or employee of the board.

- 6) Provides for additional time for filing a petition for writ of mandate to any person that also seeks reconsideration of an SWRCB decision or order.

FISCAL EFFECT: Unknown.

COMMENTS: This bill is the result of a process in which SWRCB convened a Water Rights Working Group and listened to stakeholders about how to improve and streamline the existing water rights application process. The bill is intended to correct deficiencies in SWRCB's enforcement mechanisms and improve processing of water rights petitions.

This bill provides SWRCB with sufficient information in the petition process to assess whether a change in diversion or use of water will result in injury to other users of water. Requirement of sufficient information will expedite the petition process and avoid delays in reaching decisions.

Water Code Section 1211 requires the owner of a wastewater treatment plant to obtain the approval of SWRCB before making changes in the point of discharge, place of use, or purpose of use of treated water. This rule is too broad, and leads to the review of changes that do not result in a decrease in flow and pose no threat of adverse impacts to third-party water rights holders and environmental interests. This bill clarifies that changes with no impact need not be reviewed.

Analysis Prepared by: Jeff Volberg / W., P. & W. / (916) 319-2096

FN: 0000861 0000860 0000846

CONCURRENCE IN SENATE AMENDMENTS
AB 946 (Kelley)
As Amended August 20, 2001
Majority vote

ASSEMBLY: 47-11 (May 24, 2001) SENATE: 26-12 (August 30, 2001)

Original Committee Reference: W., P. & W.

SUMMARY: Makes changes to the State Water Resources Control Board's (SWRCB's) authority to issue licenses and permits for appropriation of water.

The Senate amendments:

- 1) Add back the provision in existing law that a court shall exercise its independent judgment in cases involving the judicial review of a cease and desist order issued by SWRCB.
- 2) Eliminate provisions in this bill that expand SWRCB's authority to issue cease and desist orders.
- 3) Make minor technical changes.

AS PASSED BY THE ASSEMBLY, this bill expanded the authority of SWRCB to issue and enforce cease and desist orders under water rights permits, and restricted the authority of the courts to use their independent judgment in reviewing SWRCB orders.

FISCAL EFFECT: Minor offsetting costs and savings to SWRCB to modify its procedures for considering petitions of water rights changes and enforcing those rights. (General Fund)

COMMENTS: The Senate amendments removed a part of this bill that expanded the authority of SWRCB to issue and enforce orders regarding water rights. This part of this bill was controversial and its removal took away all opposition to this bill. The remaining part of this bill is not substantially changed from the version that passed out of the Assembly.

Analysis Prepared by: Jeff Volberg / W., P. & W. / (916) 319-2096

FN: 0002383

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 946
Author: Kelley (R)
Amended: 8/20/01 in Senate
Vote: 21

SENATE AG. & WATER RESOURCES COMMITTEE: 7-0, 7/3/01
AYES: Costa, Alpert, Battin, Bowen, Kuehl, Machado, Torlakson

SENATE JUDICIARY COMMITTEE: 4-2, 7/17/01
AYES: Escutia, O'Connell, Peace, Sher
NOES: Ackerman, Haynes

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 47-11, 5/24/01 - See last page for vote

SUBJECT: Water rights

SOURCE: State Water Resources Control Board

DIGEST: This bill makes various changes to the procedures of the State Water Resources Control Board (Board) and also clarifies existing law regarding when the Board's decisions can be appealed to the state courts by stating that reconsideration before the Board is not required to court appeals except when the decision has been made under authority delegated to an officer or employee of the Board.

ANALYSIS: The Board was established by the Legislature on January 1, 1914 and has jurisdiction over all appropriative water rights granted after that date. One of the most significant duties assigned to the Board is administration of the state's water rights system. The Board has established

CONTINUED

a system to administer water rights that is based on an application, permit and license model. To gain a perfected appropriative water right a petitioner must first apply to the Board for a water right. The Board reviews the application and approves or denies it. If the application is approved, a permit is issued. The permit holder has a specified period of time within which to put the water to "reasonable and beneficial use" as required by the Article X of the state constitution. If the permit's conditions are satisfied, the permit may mature into a license.

Under existing law the Board may make changes to the permitted place of water diversion, the place of use of the water, or the use of the water as allowed by the water right application, permit or license. Should an applicant, permit holder or license holder wish to make a change in the point of diversion or purpose or place of use allowed under their water right, they must first petition the Board for approval to make the change. The Board must consider several aspects before granting or denying a change. The Board must determine that there is no injury to any other legal user of water, they must provide notice of the change request by publication, and the petitioner must notify the Department of Fish and Game. In addition, the Board must conduct a field investigation and has the right to request information from the petitioner related to the change. Minor petitions for change (less than 3 cubic feet per second or less than 200 acre-feet per year of storage) do not require the approval of the Board, and may be approved by the Board's staff.

The Board also has enforcement authority to ensure that those holding water rights are using water within the terms of their application, permit or license. The Board may issue a preliminary cease and desist order to any person that is violating the terms of their application, permit, or license. If the infraction is not corrected the preliminary cease and desist order may mature into a final cease and desist order. The Attorney General, at the request of the Board, may seek a court order for temporary restraining order, preliminary injunction or permanent injunction. The Attorney General may also seek imposition of a fine not to exceed \$1,000 per day for each day the infraction occurs. Water right holders that receive a cease and desist order may appeal to the superior court for review.

This bill:

1. Expands the Board's ability to impose civil liability for violation of a cease and desist order by adding any "entity" to those on whom civil

CONTINUED

liability may be imposed. The bill also prohibits civil liability from being twice imposed by both the Board and the superior court if the liability would be imposed for the same act or omission to act.

2. Clarifies that changes to permits for discharges for wastewater treatment plants are exempt from Board review if the discharge does not result in a decrease in flow in any portion of a water course.
3. Adds several sections to the Water Code that modify the way changes are made to water rights applications, permits and licenses. The bill requires specific information to be provided for petitions to change applications, permits, or licenses including: the name of the petitioner; a description of the requested amendments to the application permit, or license; sufficient information to show a likelihood that the petitioned for change will not harm any legal user of water; and any other information required by applicable regulations.
4. Adds a section allowing the Board to request additional information from anyone petitioning for a change to an application, permit or license and provide a reasonable time for compliance. If the petitioner is unable to provide the information within the time specified by the Board the petition will be cancelled.
5. Allows any "interested person" to file a protest against approval of a change to an application, permit or license. The bill requires specific information to be included in the protest including: The name and address of the protestant, a clear description of the protestant's objections to the approval of the petition, and any other information required by applicable regulations. The Board must provide a reasonable period of time for the protestant to provide the information.
6. Requires the petitioner and the protestant to make a good faith effort to resolve the dispute within 180 days.
7. Allows the Board to cancel either a petition or a protest if information is not provided within the time provided. A petition or protest could not be cancelled if the reason the information is not provided is because it is not within the control of the petitioner or protestant.
8. Specifies that if a protest is based on alleged injury to another legal user of water then information concerning the protestant's historical, current,

CONTINUED

or proposed use of water is required. If the protest is based on allegations other than injury to a legal user of water then the Board may cancel the protest if it determines that the public review period has expired for the environmental documents related to the petition and there is no substantial evidence in light of the whole record to support the protest.

9. Specifies that the Board may approve or deny the petitioned for change after a hearing.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/20/01)

State Water Resources Control Board (source)
Governor Gray Davis
Sierra Club
Planning and Conservation League

ASSEMBLY FLOOR:

AYES: Alquist, Aroner, Bates, Bogh, Calderon, Cañciamilla, Cedillo, Chavez, Chu, Cohn, Correa, Dickerson, Dutra, Frommer, Goldberg, Havice, Keeley, Kehoe, Kelley, Koretz, La Suer, Longville, Lowenthal, Maldonado, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Robert Pacheco, Papan, Pavley, Richman, Salinas, Shelley, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Wyland, Zettel, Hertzberg
NOES: Ashburn, Briggs, Bill Campbell, Leslie, Mountjoy, Rod Pacheco, Reyes, Runner, Simitian, Strickland, Wyman

TSM:cm 8/21/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

AB 946 (Kelley)
SENATE FLOOR STATEMENT
August, 2001

AB 946 IS SPONSORED BY THE ADMINISTRATION. IT IMPROVES WATER RIGHT PETITION PROCESSING, AND CLARIFIES WATER CODE PROVISIONS REGARDING DISCHARGE OR USE OF TREATED WASTEWATER.

- FIRST, THIS BILL EXTENDS THE WATER RIGHT APPLICATION PROCESSING IMPROVEMENTS TO WATER RIGHT PETITION PROCESSING MADE BY MR. KELLEY'S SB 849 of 1997. AB 946 HELPS EXPEDITE WATER RIGHT PETITION PROCESSING BY AUTHORIZING THE STATE WATER BOARD TO REQUEST NECESSARY SUPPLEMENTAL INFORMATION NECESSARY TO EVALUATE THE PETITION OR PROTEST, AND ALLOWS THE STATE WATER BOARD TO CANCEL THE PETITION OR PROTEST IF THE PARTY DOES NOT PROVIDE THE INFORMATION. IT ALSO CLARIFIES PROCEDURES FOR PETITIONING TO CHANGE THE POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF WATER THAT IS DESCRIBED IN AN APPLICATION, PERMIT OR LICENSE.
- AB 946 WOULD ALSO ELIMINATE UNNECESSARY STATE BOARD REVIEW OF WATER RECYCLING AND OTHER PROJECTS THAT POSE NO THREAT OF ADVERSE ENVIRONMENTAL IMPACTS AND DO NOT REDUCE STREAMFLOWS.

THERE IS NO OPPOSITION TO AB 946 AND I ASK FOR YOUR AYE VOTE. THANK YOU!

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AB 946 (KELLEY)
WATER RIGHTS

Version: 8/20/01 Last Amended
Vote: Majority
Concur

Vice-Chair: Richard Dickerson
Tax or Fee Increase: No

A bill intended to streamline Water Resources Control Board authorities.

Concerns with the version as it left the Assembly have been addressed in the Senate.

Policy Question

1. Should changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse be excepted from review and approval by the board?
2. Should the board be able to cancel a protest or petition for water rights for failure to provide information requested by the board?
3. Should the board, after a hearing (except in limited circumstances), be able to approve with conditions, or deny a water rights petition?

Summary

~~Revises the procedure for reconsideration that may otherwise be sought by an aggrieved party of a decision of the Water Resources Control Board to not be an administrative remedy that must be exhausted before filing petition in court (for a writ of mandate) except in cases where the decision is issued under the authority delegated to an officer or employee of the board.~~ This bill also: (1) Exempts the need to seek board approval for changes in the point of discharge, place of use, or purpose of use of treated wastewater that does not result in decreasing the flow in any portion of a

watercourse; (2) Provides the board with the authority to request additional information from a petitioner or protestor of a water rights petition and allows the board to cancel a protest or petition for failure to provide adequate information (except that a protest may not be cancelled for failure to provide information that is not in the control or possession of the protestor); (3) Requires the protestor and petitioner to make a good faith effort to resolve the protest not later than 180 days from the final date a protest may be filed; (4) Allows the board, after hearing, to approve with conditions, or deny a petition; (5) Clarifies that the board is not required to hold a hearing prior to approving a petition if the petition is not protested, or if the board determines that undisputed facts support the approval of the petition and no disputed issue is of material fact; (6) Provides that the board may deny a petition without hearing 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; (7) Adds to Legislative intent that the state should take vigorous action to enforce the terms and conditions of certifications and registrations to appropriate water and to enforce board orders and decisions to prevent the unlawful diversion of water; (8) Provides that the board may issue a cease and desist order for a violation or threatened violation of the prohibition against unauthorized diversion or use of water, or of any term or condition of a permit, license, certification, or registration, or of any order or decision by the board or the public trust doctrine; and (9) Provides that the board may administratively impose civil liabilities for a violation of a cease and desist order.

The Senate Amendments:

1. Removes the provisions related to changes to the ability to issue cease and desist orders for threatened violations (returns to existing law).
2. Removes the amendments to the intent language (returns to existing law).
3. Remove the ability of the board to administratively impose civil penalties for failure to comply with a cease and desist order (returns to existing law).

Assembly Republican Water Votes (11-2) 4/3/01

Ayes: Kelley, Leslie
Noes: Dickerson, Wyman

Abs. / NV: Aanestad, Hollingsworth

Assembly Republican Judiciary Votes (8-0) 4/17/01

Ayes: Robert Pacheco, Harman
Noes: None
Abs. / NV: Bates

Assembly Republican Appropriations Votes (14-1) 5/16/01

Ayes: Bates, Maldonado, Robert Pacheco, Zettel
Noes: Ashburn
Abs. / NV: Daucher, Runner

Assembly Republican Floor Votes (47-11) 5/24/01

Ayes: Bates, Bogh, Dickerson, Kelley, La Suer, Maldonado, Robert Pacheco, Richman, Wyland, Zettel
Noes: Ashburn, Briggs, Bill Campbell, Leslie, Mountjoy, Rod Pacheco, Runner, Strickland, Wyman
Abs. / NV: All Other Republicans

Senate Republican Floor Votes (26-12) 8/30/01

Ayes: McPherson
Noes: All Other Republicans
Abs. / NV: None

Concurrence In Senate Amendments

4. Clarifies provisions related to when the board may cancel a protest based upon the failure to provide requested information.
5. Restores the provision of existing law related to the ability of the court to exercise independent judgement.

Support

State Water Resources Control Board

Opposition

None on file

Arguments In Support of the Bill

1. Applies the current provisions concerning water right applications to water right petitions. The bill that added the provisions to water right applications was unanimously passed in 1997.
2. Limits the need to seek approval from the board for changes to wastewater discharges or use to only situations that decrease the flow in any portion of a watercourse.
3. The series of amendments adding "or entity" addresses a concern for retaining consistency in application of administrative procedure.
4. Allows parties to avoid dismissal of actions under CEQA if filed beyond the deadline of the statute of limitations under certain conditions.

Arguments In Opposition to the Bill

The author removed or corrected all concerns raised in the Republican analysis as the bill left the Assembly.

Policy Consultant: Greg Hurner/Mark Redmond 8/30/01

Fiscal Consultant: Catherine Kennard 5/11/01

Fiscal Effect

As Approved in Assembly Appropriations on May 16, 2001:

MINOR STATE COSTS – Minor costs to the board offset by savings from the streamlining of procedures. Potential increased enforcement costs, offset by increased fines and penalties.

Comments

The author references the State Water Resources Control Board as the sponsor. The board provides the following background: (1) SB 849 (Kelley) (chapter 323, statutes of 1997) authorized the SWRCB to take action to expedite water right application processing, among other provisions. The bill passed without any votes in opposition. This measure would extend those same procedures to water right petitions. (2) The provisions on cease and desist orders and changes in point of discharge of treated wastewater were enacted in 1980 (chapter 933, statutes of 1980) to implement the recommendations of the Governor's Commission to Review California Water Rights Law, Final Report 1978. The commission was chaired by former Chief Justice Donald Wright and included leading authorities on water rights.

COMMITTEES

ETHICS, Co-Chair
AGRICULTURE
BUDGET
BUSINESS & PROFESSIONS
UTILITIES & COMMERCE
WATER, PARKS & WILDLIFE

CHIEF OF STAFF

NANCY LUCCHESI NEWBILL

**Assembly
California Legislature**

DAVID G. KELLEY

ASSEMBLYMAN, EIGHTIETH DISTRICT



STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0080
(916) 319-2080
FAX (916) 319-2180

DISTRICT OFFICES:
73-710 FRED WARING DRIVE, #108
PALM DESERT, CA 92260
(760) 346-2099
FAX (760) 346-0341
1430 BROADWAY, SUITE 3
EL CENTRO, CA 92243
(760) 336-8912
FAX (760) 336-8914

September 4, 2001

Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

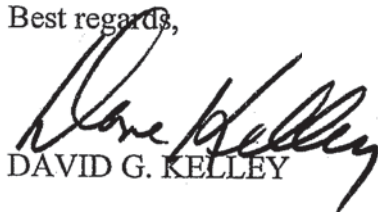
My AB 946, sponsored by the State Water Resources Control Board, has successfully moved through both Houses of the Legislature and should be on your desk for consideration very soon.

This legislation improves water right petition processing and clarifies water code provisions regarding the discharge or use of treated wastewater.

AB 946 extends the water right application processing improvements provided by my SB 849 of 1997, to water right petition processing. It also helps expedite water right petition processing by authorizing the State Water Board to request necessary supplemental information necessary to evaluate the petition or protest, and allows the Board to cancel the petition or protest if the party does not provide the information. The bill also clarifies procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license. AB 946 would also eliminate unnecessary State Board review of water recycling and other projects that pose no threat or adverse environmental impacts, and do not reduce stream flows.

I have received no written opposition to AB 946 and respectfully request that you sign it into law. Thank you for your consideration of the important legislation.

Best regards,


DAVID G. KELLEY

DGK:nlh

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL NO: AB 946 AUTHOR: Kelley DATE: 9/5/01 DUE DATE: 10/14/01

SENATE: 26-12 ASSEMBLY: 47-11 CONCURRENCE: 71-2

REVIEWED BY: RECOMMENDATION: Sign Veto

SUMMARY: This bill streamlines the State Water Resources Control Board's water-right petition and treated wastewater change petition procedures.

SPONSOR: California Environmental Protection Agency

SUPPORT: State Water Resources Control Board (SWRCB)
California Environmental Protection Agency (CalEPA)
Department of Finance (DOF)

OPPOSITION: None received.

FISCAL IMPACT: Minor savings due to streamlined water rights administrative procedures. No costs.

ARGUMENTS IN SUPPORT: This bill improves and clarifies water-right petition processing procedures and other related administrative procedures.

ARGUMENTS IN OPPOSITION: No substantive arguments in opposition.

BACKGROUND INFORMATION: Water Right Petition Process: Existing law requires that before the SWRCB approves a change in a permitted or licensed water right, the SWRCB must find that the change will not result in injury to other legal users of water. Many petitioners and protestants do not provide the information needed to make this finding, or fail to provide adequate information concerning the environmental impacts of the proposed change, thereby causing delays in SWRCB decisions. This bill specifies the information necessary to justify the petition or protest. Wastewater Change Petition Process: Current law establishes a process for review and approval of proposals to change the point of discharge, place of use, or purpose of use of treated wastewater. In addition to Regional Water Quality Control Board review for water quality impacts, changes in the discharge of treated wastewater are subject to SWRCB review to consider water quantity and water-right impacts. It is appropriate for the SWRCB to consider impacts on the environment and third party water-right holders where the flow of a watercourse (e.g., river or stream) is affected. However, it is not necessary for SWRCB to review all changes in the use or discharge of treated wastewater when the wastewater has not been released into a watercourse (i.e., ocean) and the change in point of discharge will not affect instream uses. This bill recognizes the distinction by subjecting wastewater change petitions only to discharges affecting the flow in watercourses.



CONFIDENTIAL-Government Code §6254(l)		
Department:/Board State Water Resources Control Board		Bill Number/Author: AB 946 (Kelley)
Sponsor: State Water Resources Control Board <input checked="" type="checkbox"/> Admin Sponsored Proposal No. CEPA-01-14		Related Bills Chaptering Order (if known) <input type="checkbox"/> Attachment
Subject: Water Rights		

SUMMARY

This bill would streamline the State Water Resources Control Board's (SWRCB's) water-right petition process.

PURPOSE OF THE BILL

The purpose of AB 946 is to improve water-right petition processing, and provide that the requirement for SWRCB approval of changes in point of discharge or use of treated wastewater only applies to changes that result in reduced flow in any portion of the watercourse.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN. The bill would improve and clarify water-right petition processing procedures.

ANALYSIS

Water-Right Petition Process: The bill would apply the provisions of the Water Code concerning water-right application processing that were added by SB 849 (Kelley) (Chapter 323, Statutes of 1997) to water-right petition processing.

Among other things, SB 849 allows the SWRCB to request supplemental information from a water-right applicant that is reasonably necessary to evaluate the application, including information needed to demonstrate water availability and information needed to comply with environmental laws. If the applicant fails or refuses to provide the information the information, the application may be canceled. The SWRCB is further authorized to request

Departments That May Be Affected Department of Water Resources, Department of Fish and Game	
<input type="checkbox"/> New / Increased Fee <input type="checkbox"/> Governor's Appointment <input type="checkbox"/> Legislative Appointment <input type="checkbox"/> State Mandate <input type="checkbox"/> Urgency Clause	
Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:	Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:
Director /Chair Date <i>[Signature]</i> 9/5/01	Agency Secretary Date Winston D. Hicks 9/6/01

additional information from a protestant to document the basis of the protest, and to cancel the protest for failure to comply. This bill would set similar standards for water-right protests and petitions. It would also clarify procedures for petitioning to change the point of diversion, place of use, or purpose of water that is described in an application, permit or license.

Treated Wastewater Change Petition: In addition to Regional Water Quality Control Board review for water quality impacts, changes in the discharge of treated wastewater are subject to SWRCB review under Water Code § 1211 to consider water quantity and water-right impacts. In instances where a wastewater treatment plant has been discharging water into a watercourse and proposes to change the discharge or use of the water in a way that would decrease the flow in the watercourse, it is appropriate for the SWRCB to consider the impact of the change on the environment and on third party water-right holders. However, the present wording of § 1211 requires SWRCB review and approval of all changes in the use or discharge of treated wastewater, even when the water in question has not been released into a watercourse and the change in point of discharge will not have any effect on instream uses or diversions of water from a watercourse. For example, under existing law SWRCB approval is required if a wastewater treatment plant uses its wastewater for landscape irrigation instead of discharging it to the ocean. Where there is no threat to instream flows or third party water-right holders, requiring SWRCB review is an unnecessary burden on wastewater reclamation.

AB 946 would provide that the treated wastewater change petition in Water Code § 1211 applies only to changes in the discharge or use of treated wastewater that result in reduced flow in any portion of the watercourse.

Technical Changes: The administrative provisions in Water Code §§ 1055, 1055.2 and 1122 currently apply to any "person." AB 946 amends this to any person "or entity." Water Code § 19 defines "person" in a manner that may not include some entities such as state or federal agencies or some local districts. Water Code § 1252.5 specifies that these entities have all of the rights and responsibilities that apply under "this part," the part of the Water Code addressing appropriation of water. Sections 1055, 1055.2 and 1122 are administrative provisions that apply to appropriation of water, but they are in a different "part" of the Water Code than § 1252.5. If the definition of "person" is applied narrowly, some entities holding or claiming water rights would be subject to different administrative procedures than other persons (e.g., state and federal agencies would not be allowed to petition for reconsideration, which would be an illogical result).

Another clarification is in § 1126 to clarify that when the filing of a petition for reconsideration extends the statute of limitations for filing suit against the SWRCB, that extension encompasses causes of action based on the California Environmental Quality Act (CEQA). This clarification would codify the SWRCB's interpretation of existing law. (SWRCB Order WR 2000-02 at p. 45.) Notwithstanding the SWRCB's interpretation, some parties file two lawsuits against a single SWRCB decision – one immediately after the decision based on CEQA and a second after the SWRCB acts on their petitions for reconsideration based on other causes of action. These parties claim that if they waited until the administrative process was complete before filing suit they would risk having their CEQA causes of action dismissed. Although their concerns appear to be unwarranted, their premature litigation imposes a burden on the SWRCB and the courts that may be avoided if the bill is adopted.

Senate Amendments: The Association of California Water Agencies (ACWA) requested that the bill be amended to add back the provision in existing law that a court shall exercise its independent judgment in cases involving the judicial review of a cease and desist order issued by SWRCB, and eliminated provisions in earlier version of the bill that would have expanded SWRCB's authority to issue cease and desist orders. The SWRCB accepted these amendments. The SWRCB also accepted several technical non-substantive amendments proposed by ACWA. These include an amendment that replaced a reference to protests based on public trust, public interest or environmental grounds with a generic reference to protests based on grounds other than injury to legal users of water. This amendment does not affect the validity of SWRCB regulations or change SWRCB practice allowing protests based on public interest, public trust, or environmental grounds.

LEGISLATIVE HISTORY

The water-right petition provision of AB 946 is related to SWRCB-sponsored SB 849 (Kelley) (Chapter 323, Statutes of 1997) as discussed above.

Water Code § 1211 was enacted in 1980 to establish a process for review and approval of proposals to change the point of discharge, place of use, or purpose of use of treated wastewater. The legislation was based on the recommendations of the Governor's Commission to Review California Water Rights Law

PROGRAM BACKGROUND

Water-Right Petition Process: Existing law requires that before the SWRCB approves a change in a permitted or licensed water right, the SWRCB must find that the change will not result in injury to other legal users of water. Many petitioners do not provide the information needed to make this finding, or fail to provide adequate information concerning the environmental impacts of the proposed change. Similarly, some protestants fail to provide the information necessary to properly evaluate their protests. This makes the current water-right petition process long and subject to delays due to inadequate information, and delays on the part of the petitioner or protestants.

On November 27, 2000, the SWRCB held a workshop for the water community to provide input on ways to improve the water-right process. At this workshop the law firm of Bartkiewicz, Kronick & Shanahan recommended amending the water-right petition and petition protest procedures as recommended herein. This process is ongoing with an additional workshop being held in September 2001.

Treated Wastewater Change Petition: Water Code § 1211 currently requires the owner of any wastewater treatment plant to obtain SWRCB approval before making any change in the point of discharge, place of use, or purpose of use of treated wastewater. This requirement is in addition to all legal requirements governing wastewater discharges under the Porter - Cologne Act and other water quality laws.

Over the years, releases of treated wastewater have become a substantial portion of the flow in some streams, particularly during the dry season. As releases of treated wastewater have increased, use of that water for instream purposes or by downstream diverters has also increased. The growing demand for water has increased incentives for many treatment plant

operators to find new uses for treated wastewater, rather than just releasing it into nearby watercourses. Enactment of Water Code § 1211 in 1980 established a process for review and approval of proposals to change the point of discharge, place of use, or purpose of use of treated wastewater. The 1980 legislation was based on the recommendations of the Governor's Commission to Review California Water Rights Law, but is more broadly applicable, requiring SWRCB review of some changes that would not require SWRCB review if the language recommended by the Governor's Commission had been enacted as originally proposed.

Section 1211 is included in Part 2 of Division 2 of the Water Code, which governs appropriation of water in California. The statute requires the SWRCB's review of treated wastewater change petitions to be done in accordance with the provisions governing changes in the exercise of appropriative water rights, e.g., Water Code §§ 1700 et seq. Approval of petitions subject to § 1700 requires consideration of the effects of the change on other legal users of water (e.g., Water Code § 1702).

OTHER STATES' INFORMATION

Other Western states have procedures for processing change petitions. Most have procedures similar to California's. In Colorado, change petitions are processed in judicial proceedings.

FISCAL IMPACT

Amending the water-right petition process could result in minor savings to the extent it streamlines the petition process.

Amending § 1211 would result in minor savings in that review of water recycling and other projects would no longer be required so long as they pose no threat of adverse impacts and do not reduce streamflows.

ECONOMIC IMPACT- NA

LEGAL IMPACT - NA

APPOINTMENTS - NA

SUPPORT/OPPOSITION

- Support:
- Sierra Club
 - Planning and Conservation League

- Opposition:
- None on file

ARGUMENTS

- Pro: The bill would improve and clarify water-right petition processing procedures.

Con: According to the Department of Fish and Game staff, the wastewater change petition procedure should apply to all changes, including those that affect instream flows.

VOTES

Committee	Date of Vote	Vote
Assembly Floor	8/31/01	71-2
Senate Floor	8/30/01	26-12
Assembly Floor	5/24/01	47-11

Explanation of "no" votes: According to the Senate Republican Caucus, Senate "no" votes were a result of concerns about the SWRCB's ability to impose administrative civil liability expanded to any "entity." However, this appears to be a mistake because all administrative civil liability (i.e. fine) provisions were amended out of the bill before the floor vote.

LEGISLATIVE STAFF CONTACT

Contact	Work	Home	Cell Phone	Pager
Secretary, Cal/EPA Winston Hickox	323-2514	484-0356	798-3363	594-2081
Chair, SWRCB Art Baggett	341-5611	209/379-2289	804-1544	209/742-2774
SWRCB Executive Director Celeste Cantú	341-5615	530/756-5212	747-0519	747-0519
Legislative Director, Cal/EPA Patty Zwarts	322-7326	452-9464	731-0506	731-0506
Legislative Director, SWRCB Tom Jones	341-5255	452-2489	834-4411	523-8148

All area codes are (916) unless otherwise indicated

SAMPLE VETO MESSAGE

To the members of the California Assembly:

I am returning Assembly Bill 946 without my signature.

AB 946 would codify the procedure for water-right petition processing, and would provide that the requirement for State Water Resources Control Board (State Water Board) approval of changes in point of discharge or use of treated wastewater only applies to changes that result in reduced flow in any portion of the watercourse.

The bill is unnecessary because the petition processing procedure could be implemented through regulation. The bill would expand the authority of the State Water Board to cancel change petitions under certain conditions.

The treated wastewater provisions of the bill are of concern because they would preclude State Board approval of the changed streamflow, leaving to wastewater dischargers the discretion to decide whether reduced flow actually exists. The State Water Board should not abdicate this review.

Sincerely,

Gray Davis

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: August 20, 2001
RECOMMENDATION: Sign
SPONSOR: State Water Resources Control Board (CEPA
 01-14)
ASSEMBLY: 47/11
SENATE: 26/12

BILL NUMBER: AB 946
AUTHOR: D. Kelley

BILL SUMMARY: Water Rights

This bill, the outgrowth of various stakeholder workshops, would make changes to the Water Resources Control Board's (Water Board's) enforcement authority and clarify existing law.

Specifically, the bill would: specify water rights petition requirements, exempt a wastewater treatment facility owner from obtaining approval for a change in the point of discharge of treated wastewater if the change does not result in decreasing the flow in any portion of a watercourse, and codify existing practice allowing for an extension for filing an action against the Water Board in California Environmental Quality Act proceedings.

FISCAL SUMMARY

The net fiscal impact of expanding enforcement authority is unknown, but the Water Board estimates it would be minor. Any additional enforcement costs would be offset by fine revenues.

COMMENTS

Finance recommends that the bill be signed because it would streamline the water rights petition process, resulting in greater efficiency.

The Water Board is responsible for issuing water rights permits and licenses, enforcing terms and conditions of permits and licenses, abating illegal diversions, and preventing waste or unreasonable use of water. Over the past several years, additional funding has been provided to address workload, but a sizable permitting backlog still exists.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year)			Fund Code
				2001-2002	2002-2003	2003-2004	
1256/Othr Reg Fee	RV	No		----- No/Minor Fiscal Impact -----			0001
3940/SWRCB	SO	No		----- No/Minor Fiscal Impact -----			0001

10 Analyst/Principal (0622) R. Dean *Robert Dean* Date *9/6/01*
 Program Budget Manager Fred Klass Date *John Klass 9/6/01*
 Department Director *Tim Dege* Date *9/8/01*

CHIEF DEPUTIES

Diane F. Boyer-Vine
Jeffrey A. DeLand

PRINCIPAL DEPUTIES

C. David Dickerson
John T. Studebaker
Daniel A. Weitzman
Christopher Zirkle

David D. Alves
Alvin D. Gress
Robert D. Gronke
Michael R. Kelly
Michael J. Kersten
James A. Marsala
Robert G. Miller
Tracy O. Powell II
Marguerite Roth
William K. Stark
Michael H. Upson
Richard B. Weisberg

DEPUTIES

Paul Antilla
Charles C. Asbill
Lara K. Bierman
Maria L. Bondonno
Ann M. Burastero
Eileen J. Buxton
Cindy M. Cardullo
Edward Ned Cohen
Emilia Cutrer
Ben E. Dale
Byron D. Damiani, Jr.
Clinton J. deWitt
Frances S. Dorbin
Linda Dozier
Sharon R. Fisher
Patricia R. Gates
Debra Zidich Gibbons
Kristen A. Goodwin
Sonya Anne Grant
Maria Hilakos Hanke
Jana T. Harrington
Baldev S. Heir
Thomas R. Heuer
Russell Holder
Lori Ann Joseph
Michael Robert Kerr
Jacqueline R. Kinney
Eve B. Krottinger
Aubrey LaBrie
L. Erik Lange
Felicia A. Lee
Diana G. Lim
Kirk S. Louie
Mariana Marin
Anthony P. Márquez
Francisco A. Martin
JudyAnne McGinley
Peter Melnicoe
Abel Muñoz
Donna L. Neville
Willard L. Pope, Jr.
Robert A. Pratt
Tara Rufo
Beth A. Salamon
Michael B. Salerno
Stephanie Shimazu
Jessica L. Steele
Christopher H. Stevens
Amanda H. Stelmack
Ellen Sward
Mark Franklin Terry
Jeff Thom
Carol J. Urzi
Karen L. Ziskind
Jack G. Zorman

OFFICE OF LEGISLATIVE COUNSEL

State Capitol, Suite 3021
Sacramento, California 95814-4996

TELEPHONE (916) 445-3057
FACSIMILE (916) 322-0769
INTERNET www.legislativecounsel.ca.gov
EMAIL LegislativeCounsel@lc.ca.gov



BION M. GREGORY

September 18, 2001

Honorable Gray Davis
Governor of California
Sacramento, CA 95814

ASSEMBLY BILL NO. 946

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Assembly Member Kelley and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Edward Ned Cohen
Principal Deputy

NC:tlv

Two copies to Honorable David Kelley,
pursuant to Joint Rule 34.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Assembly Bill No. 946

CHAPTER 315

An act to amend Sections 1055, 1055.2, 1122, 1126, 1211, and 1704 of, and to add Sections 1701.1, 1701.2, 1701.3, 1701.4, 1703.1, 1703.2, 1703.3, 1703.4, 1703.5, and 1703.6 to, the Water Code, relating to water.

[Approved by Governor September 19, 2001. Filed with Secretary of State September 20, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 946, Kelley. Water rights.

(1) Existing law specifies procedures under which a person may be subject to administrative civil liability for unauthorized diversion or use of water. Existing law specifies procedures under which the State Water Resources Board may order a reconsideration of any of its decisions or orders on the filing of a petition for writ of mandate by any interested person.

This bill would expand these procedures to apply to any person or entity.

(2) Existing law authorizes any party aggrieved by any decision or order of the board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate.

(3) Existing law requires that the time for filing the petition for a writ of mandate described in (2) above be extended for any person who seeks reconsideration of the decision or order of the board.

Existing law, the California Environmental Quality Act (CEQA), requires that any action or proceeding to challenge certain acts or decisions of a public agency on the grounds of noncompliance with the act be commenced within certain time limits.

This bill would require that the time for filing any of these CEQA actions or proceedings against the board be extended for any person who seeks reconsideration of any decision or order of the board. The bill would provide that the amendment made by this bill, with respect to this provision, does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement 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.

(5) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the petition and would impose requirements in connection with the filing of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

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

SECTION 1. Section 1055 of the Water Code is amended to read:

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 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, and shall inform the party served that the party may request a hearing not

later than 20 days from the date the party was served. The hearing shall be before a member of the board as it may specify.

(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking any additional evidence as may be necessary that could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.

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

SEC. 2. Section 1055.2 of the Water Code is amended to read:

1055.2. No person or entity shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under subdivision (d) of Section 1052 for the same act or failure to act.

SEC. 3. Section 1122 of the Water Code is amended to read:

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.

SEC. 4. Section 1126 of the Water Code is amended to read:

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 judgement 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 judgement 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 state 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.

SEC. 5. Section 1211 of the Water Code is amended to read:

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.

SEC. 6. Section 1701.1 is added to the Water Code, to read:

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.

SEC. 7. Section 1701.2 is added to the Water Code, to read:

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 Game, 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.

SEC. 8. Section 1701.3 is added to the Water Code, to read:

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 article. 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.

SEC. 9. Section 1701.4 is added to the Water Code, to read:

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.

SEC. 10. Section 1703.1 is added to the Water Code, to read:

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.

SEC. 11. Section 1703.2 is added to the Water Code, to read:

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.

SEC. 12. Section 1703.3 is added to the Water Code, to read:

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.

SEC. 13. Section 1703.4 is added to the Water Code, to read:

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 additional time for the protestant and the petitioner to attempt to resolve the protest.

SEC. 14. Section 1703.5 is added to the Water Code, to read:

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.

SEC. 15. Section 1703.6 is added to the Water Code, to read:

1703.6. (a) The board may cancel a protest or petition 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), the board may 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, and 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 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 change will result in injury to the protestant's exercise of its water right.

(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) and the part of the protest subject to subdivision (d) may be canceled pursuant to subdivision (d).

SEC. 16. Section 1704 of the Water Code is amended to read:

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.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

CALIFORNIA LEGISLATURE

**2001–02 REGULAR SESSION
2001–02 FIRST EXTRAORDINARY SESSION
2001–02 SECOND EXTRAORDINARY SESSION**

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 2001

and

1999–2001 Statutory Record



GREGORY SCHMIDT
Secretary of the Senate

E. DOTSON WILSON
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

the bill would provide for a source of funding for the continuously appropriated Fish and Game Preservation Fund for an extended period of time, and would impose duties on the department, the costs of which are payable from that fund, the bill would make an appropriation.

Ch. 315 (AB 946) Kelley. Water rights.

(1) Existing law specifies procedures under which a person may be subject to administrative civil liability for unauthorized diversion or use of water. Existing law specifies procedures under which the State Water Resources Board may order a reconsideration of any of its decisions or orders on the filing of a petition for writ of mandate by any interested person.

This bill would expand these procedures to apply to any person or entity.

(2) Existing law authorizes any party aggrieved by any decision or order of the board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate.

(3) Existing law requires that the time for filing the petition for a writ of mandate described in (2) above be extended for any person who seeks reconsideration of the decision or order of the board.

Existing law, the California Environmental Quality Act (CEQA), requires that any action or proceeding to challenge certain acts or decisions of a public agency on the grounds of noncompliance with the act be commenced within certain time limits.

This bill would require that the time for filing any of these CEQA actions or proceedings against the board be extended for any person who seeks reconsideration of any decision or order of the board. The bill would provide that the amendment made by this bill, with respect to this provision, does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement 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.

(5) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the petition and would impose requirements in connection with the filing of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

NOTE: Superior numbers appear as a separate section at the end of the digests.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

Ch. 316 (AB 1187) Simitian. Solid waste: recycling: tires: used oil.

(1) Existing law, the California Integrated Waste Management Act of 1989, establishes an integrated waste management program administered by the California Integrated Waste Management Board.

Under the act, each operator of a solid waste disposal facility is required to pay a quarterly fee to the State Board of Equalization, based upon the amount of solid waste disposed of at each site, and the revenue from the fee is required to be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund. The board is authorized to expend the revenues in the account, upon appropriation by the Legislature, for specified purposes, including issuing grants to cities, counties, or other local agencies for specified purposes with regard to preventing the disposal of hazardous waste at solid waste disposal sites. Existing law prohibits the total amount of grants made by the board pursuant to this grant program from exceeding, in any one fiscal year, \$3,000,000.

This bill would allow the total amount of grants made by the board pursuant to the grant program to exceed that amount, but would prohibit the amount from exceeding \$5,000,000, in any one fiscal year, if sufficient funds are appropriated from the Integrated Waste Management Account.

(2) Existing law, which is part of the act, requires any person who stores, stockpiles, or accumulates waste tires in a specified manner, to clean up those waste tires or abate the effects thereof, or in the case of threatened pollution or nuisance, as defined, take other necessary remedial action, upon the order of the board. If a person fails to comply with such an order, the Attorney General, district attorney, or county counsel is required to file a petition within 45 days of the discovery of the failure to comply with the board's order, at the request of the board.

This bill would instead require the Attorney General to make such a petition, at the request of the board, and would authorize the district attorney or county counsel to file a petition within 45 days of the board's request, if the Attorney General declines, or is unable, to file a petition.

(3) Existing law requires every person who engages in the transportation of used and waste tires to hold a valid waste tire hauler registration.

This bill would define the term "waste and used tire hauler" for purposes of those provisions.

(4) Existing law authorizes a generator, waste and used tire hauler, or operator of a waste tire facility that is subject to prescribed requirements to submit an electronic report that includes all information required to be on the California Uniform Waste and Used Tire Manifest, if this submission is approved by the California Integrated Waste Management Board.

This bill would delete the provision in which this authority is granted in existing law, and would instead move this authority to another provision. The bill would also make related technical and conforming changes.

(5) Existing law, the California Oil Recycling Enhancement Act, requires an oil manufacturer to pay the board a specified amount for every gallon of lubricating oil sold or transferred in the state, or imported into the state for use in the state. These amounts are required to be deposited in the California Used Oil Recycling Fund, which is continuously appropriated for specified purposes, including the payment of recycling incentives to certified used oil collection centers. Existing law requires a used oil collection center to operate in a specified manner and prohibits a used oil collection center from accepting more than 20 gallons of used lubricating oil from a person each day.

This bill would repeal that prohibition.

NOTE: Superior numbers appear as a separate section at the end of the digests.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Volume 7

Index to Journal of the Assembly

Legislature of the State of California

2001–02 Regular Session

December 4, 2000 to November 30, 2002

2001–02 First Extraordinary Session

January 3, 2001 to May 14, 2001

2001–02 Second Extraordinary Session

May 14, 2001 to May 9, 2002

2001–02 Third Extraordinary Session

January 10, 2002 to May 2, 2002



HON. HERB J. WESSON, JR.
Speaker

HON. FRED KEELEY
Speaker pro Tempore

HON. KEVIN SHELLEY
Majority Leader

HON. MARCO FIREBAUGH
Majority Floor Leader

HON. CHRISTINE KEHOE
Assistant Speaker pro Tempore

HON. DAVE COX
Minority Leader

E. DOTSON WILSON
Chief Clerk

PAM CAVILEER
Minute Clerk

A.B. No.

- 938 Introduced, 407; read first time, 456; to committee, 619; author's amendments, read second time, amended, re-referred, 1135; from committee, 1321; read second time, amended, re-referred, 1357; from committee, 1770; read second time, amended, returned to second reading, 1827; to Consent Calendar, 1857; read third time, passed, to Senate, 1943; from Senate, with amendments, 3320; to Special Consent Calendar, 3322; amendments concurred in, to enrollment, 3419; enrolled, to Governor, 4099; Chapter 817 (2001)
- 939 Introduced, 407; read first time, 456; to committee, 619; from committee, re-referred, 1143; author's amendments, read second time, amended, re-referred, 1264; from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art. IV, Sec. 10(c) of Constitution, 4754
- 940 Introduced, 407; read first time, 456; to committee, 619; from committee, re-referred, 1138; from committee, 1945; read second time, amended, returned to second reading, 1954; to third reading, 2000; read third time, passed, to Senate, 2266; from Senate, without action, 9050
- 941 Introduced, 407; read first time, 456; to committee, 619; Joint Rule 61(a)(2) suspended, 1247; author's amendments, read second time, amended, re-referred, 1343; from committee, 1574; read second time, amended, re-referred, 1622; from committee, 1945; read second time, to Consent Calendar, 1953; read third time, passed, to Senate, 2215; from Senate, with amendments, 3783; to Special Consent Calendar, 3784; amendments concurred in, to enrollment, 3987; enrolled, to Governor, 4105; Chapter 666 (2001)
- 942 Introduced, 407; read first time, 456; to committee, 619; from committee, 1203; read second time, amended, re-referred, 1232; withdrawn from committee, to second reading, 1401; read second time, to third reading, 1442; read third time, passed, to Senate, 1537; from Senate, with amendments, 2913; amendments concurred in, to enrollment, 3095; Journal, Print in, explanation of vote, 3106; enrolled, to Governor, 3178; Chapter 211 (2001)
- 943 Introduced, 407; read first time, 456; to committee, 619; author's amendments, read second time, amended, re-referred, 791; from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art. IV, Sec. 10(c) of Constitution, 4745
- 944 Introduced, 407; read first time, 456; to committee(s), 619; from committee, to Chief Clerk pursuant to Joint Rule 56, died pursuant to Art. IV, Sec. 10(c) of Constitution, 4751
- 945 Introduced, 408; read first time, 456; to committee, 619; from committee, 1002; read second time, amended, re-referred, 1053; from committee, 1513; read second time, to Consent Calendar, 1580; read third time, passed, to Senate, 1693; from Senate, to enrollment, 3434; enrolled, to Governor, 4099; Chapter 524 (2001)
- 946 Introduced, 408; read first time, 456; to committee(s), 619; from committee, 939; read second time, amended, re-referred, 1008; from committee, 1199; read second time, amended, re-referred, 1230; from committee, 1647; read second time, to third reading, 1719; read third time, passed, to Senate, 1789; from Senate, with amendments, 3320; Assembly Rule 77 suspended, 3331; amendments concurred in, to enrollment, 3347; enrolled, to Governor, 3777; Chapter 315 (2001)
- 947 Introduced, 408; read first time, 456; to committee(s), 686; author's amendments, read second time, amended, re-referred, 833; from committee, re-referred, 900, 1143; from committee, 1948; read second time, to third reading, 1968; read third time, passed and retained, 2066; read third time, passed, to Senate, 2286; from Senate, with amendments, 7895; amendments concurred in, to enrollment, 8114; enrolled, to Governor, 8839; Chapter 457 (2002)

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1961 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING THE ACTION ON ALL SENATE BILLS, CONSTITUTIONAL
AMENDMENTS, CONCURRENT AND JOINT RESOLUTIONS
AND SENATE RESOLUTIONS INTRODUCED

Including Also Lists of Officers, Members, Attaches, Interim and
Standing Committees of the Senate

BEGAN JANUARY 2, 1961, AND ADJOURNED SINE DIE JUNE 16, 1961

LEGISLATIVE DAYS 116

CALENDAR DAYS 120

The Bill Signing Period Expired 12 O'clock Midnight, July 21, 1961

Laws Become Effective September 15, 1961
(Unless otherwise specified)

Last Day for Filing Referendum, September 14, 1961

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

Compiled Under the Direction of
J. A. BEEK
Secretary of the Senate

With the Assistance of
FRANKLIN W. MERRILL
Assistant Secretary

J. W. LINDSAY
Assistant History Clerk

1341—Begovich, April 19 To Com. on L Gov.

An act to amend Section 28152 of the Government Code, relating to compensation of county officers

April 19—Read first time To printer From printer To committee
 May 26—From Com Do Pass To Consent Calendar
 May 27—Read second time, to engrossment and to Consent Calendar
 May 29—Reported correctly engrossed
 May 30—Read third time, passed, title approved To Assembly
 May 31—In Assembly Read first time To Com on Mun & C G
 June 9—From committee Do pass Read second time To third reading.
 June 12—Read third time, passed, title approved. To Senate.
 June 12—In Senate To enrollment
 June 16—Reported correctly enrolled To Governor
 July 15—Approved by Governor Chapter 1809

1342—Shaw, Burns, Christensen, Gibson, Geddes, Hollister, Slattery, Collier, and McAteer, April 19. To Com on Gov. Eff

An act to amend Section 1372 of the Financial Code, relating to the investment of retirement funds

April 19—Read first time. To printer From printer. To committee
 May 27—From committee with recommendation Be amended and re-referred to Com on Fin.
 May 29—Read second time. Amended. To print, and re-referred to Com on Fin.
 June 16—From committee without further action

1343—McAteer, April 19 To Com on F. & G.

An act to repeal Sections 8276 and 8277 of, to add Section 8276 to, and to amend Section 8281 of, the Fish and Game Code, relating to crabs.

April 19—Read first time To printer. From printer To committee
 June 16—From committee without further action

1344—McAteer and Christensen, April 19. To Com. on F. & G. and Game Code, relating to crabs

April 19—Read first time To printer From printer. To committee
 June 16—From committee without further action

1345—Short, April 19. To Com. on Trans.

An act to amend Sections 565, 570, 4010, and 9281 of the Vehicle Code, relating to railroad construction equipment.

April 19—Read first time To printer From printer. To committee
 June 16—From committee without further action.

1346—Short, April 19. To Com on Wat Res

An act to add Article 6 (commencing with Section 1485) to Chapter 7, Part 2, Division 2 of the Water Code, relating to appropriation of water.

April 19—Read first time. To printer From printer. To committee.
 May 4—Request to consider within 30 days Request granted Art. IV, Sec 2(a), of Constitution suspended, permitting Bill to be heard in Committee.
 May 10—From committee with author's amendments Read second time. Amended Re-referred to committee
 May 19—From committee with recommendation Be amended and re-referred to Com on Wat Res
 May 22—Read second time Amended To print, and re-referred to committee.
 May 24—From committee Do pass as amended.
 May 25—Read second time Amended. To print, engrossment, and third reading
 May 26—Reported correctly engrossed Motion by Senator Cobey to re-refer to Rules Committee for interim committee study, defeated Read third time, passed, title approved To Assembly
 May 29—In Assembly Read first time. To Com. on Water.
 June 6—From committee. Do pass as amended.
 June 7—Read second time Amended To printer. From printer. Ordered returned to Second Reading File
 June 8—Read second time. To third reading
 June 9—Read third time, passed, title approved To Senate.
 June 9—In Senate To unfinished business
 June 10—Senate concurs in Assembly amendment To enrollment
 June 12—Reported correctly enrolled To Governor.
 July 19—Approved by Governor Chapter 2143.

Introduced by Senator Short

April 19, 1961

REFERRED TO COMMITTEE ON WATER RESOURCES

An act to add Article 6 (commencing with Section 1485) to Chapter 7, Part 2, Division 2 of the Water Code, relating to appropriation of water.

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

1 SECTION 1. Article 6 (commencing with Section 1485) is
2 added to Chapter 7, Part 2, Division 2 of the Water Code, to
3 read:

4
5 Article 6. Applications by Governmental Agencies
6 Discharging Disposal Water
7

8 1485. Any municipality, governmental agency, or political
9 subdivision operating sewerage disposal plants producing dis-
10 posal water of a quality meeting the requirements of the State
11 Water Pollution Control Board, and disposing of said water
12 in any river, stream, lake or waterway may file an application
13 for a permit to appropriate an equal amount of water down-
14 stream from said disposal plant and out of the same river,
15 stream, lake, or waterway. A permit to appropriate such
16 amount of water shall be granted by the State Water Rights
17 Board. The water so appropriated may be used for any bene-
18 ficial purpose by any of the inhabitants within the boundaries
19 of such municipality, governmental agency, or political sub-
20 division.

LEGISLATIVE COUNSEL'S DIGEST

S.B. 1346, as introduced, Short (Wat. Res.). Appropriation of water.

Adds Art. 6 (commencing with Sec. 1485), Ch. 7, Pt. 2, Div. 2, Wat.C.

Provides that any municipality, governmental agency, or political subdivision operating sewerage disposal plants producing disposal water of quality meeting requirements of State Water Pollution Control Board may apply for, and shall be granted, permit to appropriate an equal amount of water downstream. Provides that the water so appropriated may be used by its inhabitants for any beneficial purpose.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Introduced by Senator Short

April 19, 1961

REFERRED TO COMMITTEE ON WATER RESOURCES

An act to add Article 6 (commencing with Section 1485) to Chapter 7, Part 2, Division 2 of the Water Code, relating to appropriation of water.

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

1 SECTION 1. Article 6 (commencing with Section 1485) is
2 added to Chapter 7, Part 2, Division 2 of the Water Code, to
3 read:

4
5 Article 6. Applications by Governmental Agencies
6 Discharging Disposal Water
7

8 1485. Any municipality, governmental agency, or political
9 subdivision operating sewerage disposal plants producing dis-
10 posal water of a quality meeting the requirements of the State
11 Water Pollution Control Board, and disposing of said water
12 in any river, stream, lake or waterway may file an application
13 for a permit to appropriate an equal amount of water down-
14 stream from said disposal plant and out of the same river,
15 stream, lake, or waterway. A permit to appropriate such
16 amount of water shall be granted by the State Water Rights
17 Board. ~~The water so appropriated may be used for any bene-~~
18 ~~ficial purpose by any of the inhabitants within the boundaries~~
19 ~~of such municipality, governmental agency, or political sub-~~
20 ~~division. Board. Water so appropriated may be sold or utilized~~
21 *for any beneficial purpose.*

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN SENATE MAY 22, 1961

AMENDED IN SENATE MAY 10, 1961

SENATE BILL

No. 1346

Introduced by Senator Short

April 19, 1961

REFERRED TO COMMITTEE ON WATER RESOURCES

An act to add Article 6 (commencing with Section 1485) to Chapter 7, Part 2, Division 2 of the Water Code, relating to appropriation of water.

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

1 SECTION 1. Article 6 (commencing with Section 1485) is
2 added to Chapter 7, Part 2, Division 2 of the Water Code, to
3 read:

4 Article 6. Applications by Governmental Agencies
5 Discharging Disposal Water
6
7

8 1485. Any municipality, governmental agency, or political
9 subdivision operating sewerage disposal plants producing dis-
10 posal water meeting the requirements of the State Water Pol-
11 lution Control Board, and disposing of said water in any river,
12 stream, lake or waterway may file an application for a permit
13 to appropriate an equal amount of water, *less diminution by*
14 *seepage, evaporation, transpiration or other natural causes be-*
15 *tween the point of discharge and the point of recovery,* down-
16 stream from said disposal plant and out of the same river,
17 stream, lake, or waterway. A permit to appropriate such
18 amount of water shall be granted by the State Water Rights
19 Board upon such terms and conditions as in the board's judg-
20 ment are necessary for the protection of the rights of others.
21 Water so appropriated may be sold or utilized for any bene-
22 ficial purpose.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN SENATE MAY 25, 1961
AMENDED IN SENATE MAY 22, 1961
AMENDED IN SENATE MAY 10, 1961

SENATE BILL

No. 1346

Introduced by Senator Short

April 19, 1961

REFERRED TO COMMITTEE ON WATER RESOURCES

An act to add Article 6 (commencing with Section 1485) to Chapter 7, Part 2, Division 2 of the Water Code, relating to appropriation of water.

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

1 SECTION 1. Article 6 (commencing with Section 1485) is
2 added to Chapter 7, Part 2, Division 2 of the Water Code, to
3 read:

4
5 Article 6. Applications by Governmental Agencies
6 Discharging Disposal Water
7

8 1485. Any municipality, governmental agency, or political
9 subdivision operating sewerage disposal plants producing dis-
10 posal water meeting the requirements of the State Water Pol-
11 lution Control Board, and disposing of said water in ~~any river,~~
12 ~~the San Joaquin River stream, lake or waterway~~ may file an
13 application for a permit to appropriate an equal amount of
14 water, less diminution by seepage, evaporation, transpiration
15 or other natural causes between the point of discharge and the
16 point of recovery, downstream from said disposal plant and
17 out of the ~~same river~~ *San Joaquin River or the Sacramento-*
18 *San Joaquin Delta stream, lake, or waterway.* A permit to
19 appropriate such amount of water shall be granted by the
20 State Water Rights Board upon such terms and conditions as
21 in the board's judgment are necessary for the protection of the
22 rights of others. Water so appropriated may be sold or utilized
23 for any beneficial purpose. *The right to the use of water*
24 *granted by this section shall not include water flowing in*
25 *underground streams.*

1 *The Legislature finds and declares that the problems inci-*
2 *dent to the full utilization of the waters of the San Joaquin*
3 *River and the Sacramento-San Joaquin Delta into which it*
4 *flows, are unique and that a general law cannot be made ap-*
5 *plicable thereto.*

()

AMENDED IN ASSEMBLY JUNE 7, 1961
AMENDED IN SENATE MAY 25, 1961
AMENDED IN SENATE MAY 22, 1961
AMENDED IN SENATE MAY 10, 1961

SENATE BILL

No. 1346

Introduced by Senator Short

April 19, 1961

REFERRED TO COMMITTEE ON WATER RESOURCES

An act to add Article 6 (commencing with Section 1485) to Chapter 7, Part 2, Division 2 of the Water Code, relating to appropriation of water.

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

1 SECTION 1. Article 6 (commencing with Section 1485) is
2 added to Chapter 7, Part 2, Division 2 of the Water Code, to
3 read:

4 Article 6. Applications by Governmental Agencies
5 Discharging Disposal Water
6
7

8 1485. Any municipality, governmental agency, or political
9 subdivision operating sewerage disposal plants producing dis-
10 posal water meeting the requirements of the State Water Pol-
11 lution Control Board, and disposing of said water in the San
12 Joaquin River may file an application for a permit to appro-
13 priate an equal amount of water, less diminution by seepage,
14 evaporation, transpiration or other natural causes between the
15 point of discharge and the point of recovery, downstream from
16 said disposal plant and out of the San Joaquin River or the
17 Sacramento-San Joaquin Delta. A permit to appropriate such
18 amount of water shall may be granted by the State Water
19 Rights Board upon such terms and conditions as in the board's
20 judgment are necessary for the protection of the rights of
21 others. Water so appropriated may be sold or utilized for any
22 beneficial purpose. The right to the use of water granted by
23 this section shall not include water flowing in underground
24 streams.

1 The Legislature finds and declares that the problems inci-
2 dent to the full utilization of the waters of the San Joaquin
3 River and the Sacramento-San Joaquin Delta into which it
4 flows, are unique and that a general law cannot be made ap-
5 plicable thereto.

GOVERNOR'S OFFICE

JUN 22 1961

Sacramento.....
Subjec.. ~~AB~~ S.B. 1346
Please reply forthwith *no analysis*

- HONORABLE A. ALAN POST
- Legislative Analyst
- Room 306, State Capital
- SACRAMENTO 14, CALIFORNIA

The attached bill has been received at this office for Governor Brown's consideration.
The Governor will appreciate a digest of this bill at your earliest convenience.

ALEXANDER H. POPE
Legislative Secretary

STATE OF CALIFORNIA

Interdepartmental Communication

To: Honorable Edmund G. Brown
Governor of California

Date: June 23, 1961

File No.

From: Office of The Attorney General
Department of Justice

J. M. SANDERSON

Subject:

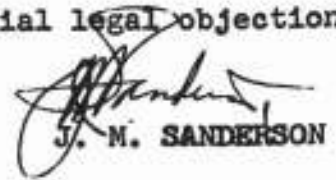
S. B. NO. 1346

S. B. No. 1346 would add Section 1485 to the Water Code and provide for the recovery by a municipality, governmental agency or political subdivision, of water discharged into the San Joaquin River in the form of sewage to an amount equal to that discharged less any diminution by seepage, evaporation, transpiration or other natural causes. However it also provides that the agency making the discharge must be meeting the requirements of the State Water Pollution Control Board. The State Water Pollution Control Board does not normally set requirements or discharges and in fact has established no discharge requirement affecting the San Joaquin River.

The bill therefore in its present form would have little or no effect.

Other than the above, we find no substantial legal objection thereto.

JMS:dlch


J. M. SANDERSON

RALPH N. KLEPS
LEGISLATIVE COUNSEL
ANGUS C. MORRISON
CHIEF DEPUTY
BERNARD CERLA
GEORGE H. MURPHY
PRINCIPAL DEPUTIES
STANLEY M. LOURIMORE
DEPUTY IN CHARGE
LOS ANGELES OFFICE



STATE OF CALIFORNIA
Office of Legislative Counsel

2021 STATE CAPITOL, SACRAMENTO 14
511 STATE BUILDING, LOS ANGELES 12

June 26, 1961

TERRY L. BAUM
BARBARA C. CALAH
VIRGINIA CORER
JOSEPH E. COOPER, JR.
KENT L. DECHAMBEAU
J. GOULD
ROBERT G. HINDMAN
OWEN K. KUNE
ERNEST H. KUNE
ANN M. MACEY
EDWARD F. MOWAT
EDWARD K. PURCELL
RAY H. WHITAKER
FRED G. WILLIAMS
RICHARD T. WILSON
ROSE WOODS
DEPUTIES

REPORT ON SENATE BILL NO. 1346. SHORT.

SUMMARY: Adds Art. 6 (commencing with Sec. 1485),
Ch. 7, Pt. 2, Div. 2, Wat. C., re appropriation of
water.


Authorizes public agency operating sewage
disposal plants producing disposal water meeting
requirements of State Water Pollution Control Board,
and disposing of said water in San Joaquin River, to
file application for permit to appropriate an equal
amount of water, less certain diminutions thereof betwe
point of discharge and point of recovery, downstream
from said disposal plant and out of San Joaquin River
or Sacramento-San Joaquin Delta. Authorizes State Water
Rights Board to grant permit upon such terms and
conditions it deems necessary for protection of rights
of others.

FORM: Approved.

TITLE: Approved.

CONSTITUTIONALITY: Approved.

Ralph N. Kleps
Legislative Counsel

By 
Ray H. Whitaker
Deputy Legislative Counsel

RHW:djg

STATE OF CALIFORNIA

Inter-Departmental Communication

1961 JUN 28 AM 9 37

To: Mr. Alexander H. Pope
Legislative Secretary
Governor's Office

Date: 6-27-61

Subject: SB-1346

From: State Water Pollution Control Board
Room 418, 731 Capitol Avenue, Sacramento, California

I am pleased to submit the following comments in response to your inquiry of June 23 regarding SB-1346:

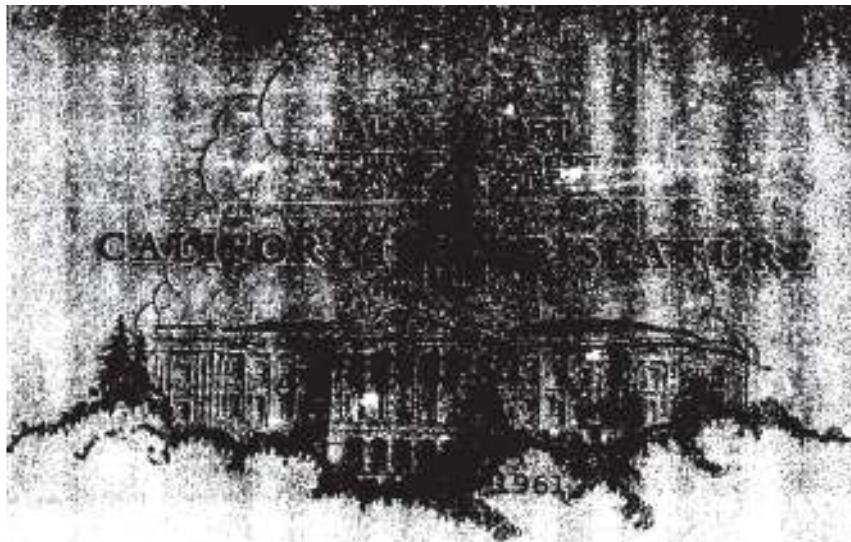
As stated in my letter of June 26, this was one of the bills called to the attention of the State Board at its meeting on June 7. The State Board, of course, took no official position on this bill.

When the bill was first called to our attention, the staff pointed out to the author the fact that the amendment refers to ". . . requirements of the State Water Pollution Control Board . . ." Actually, in this instance, the board that would be establishing such requirements would be the Central Valley Regional Water Pollution Control Board. Although the wording of the bill possibly could be construed to include the Regional Board, it may be that this is a technical error that would cause the statement in question to have no meaning. It might be advisable for your office to contact the Attorney General's Office if there is any question on this.

Other than the above remarks, we see nothing in SB-1346 that would pose a problem as it relates to the operations of the water pollution control boards. We, of course, are in no position to comment on those portions of the bill that deal with the matter of water rights.

Paul R. Bonderson

PAUL R. BONDERSON
Executive Officer



The Honorable Edmund G. Brown
Governor of California
Capitol Building
Sacramento, California

Re: SB 1346

Dear Governor Brown:

The purpose of this bill is to encourage municipalities to better treat sewage disposal water and allow them to appropriate an equivalent supply of this disposal water at points downstream in the natural channel.

It clarifies the present law which makes it questionable as to whether or not a municipality would have the right to recover its supply of sewage affluent once it is discharged into a natural stream.

The bill is restricted in its application to the San Joaquin River and the Sacramento-San Joaquin Delta.

I sincerely urge your favorable consideration of this bill.

Respectfully yours,


ALAN SHORT

STATE OF CALIFORNIA
SACRAMENTO

Interdepartmental Communication


<p>┌</p>	<p>Honorable Edmund G. Brown Governor of California State Capitol Sacramento, California</p>	<p>Date: <u>JUL 5</u> 1961</p>
<p>To:</p>	<p>Attention: Mr. Alexander H. Pope Legislative Secretary</p>	<p>File No.</p>
<p>└</p>	<p>From: Director of Water Resources</p>	
<p>Subject:</p>	<p>Recommendations on SB 1346</p>	

SB 1346 adds Article 6 (commencing with Section 1485) to Chapter 7 of Part 2 of Division 2 of the Water Code to authorize any municipality, governmental agency, or political subdivision operating sewerage disposal plants producing disposal water meeting the requirements of the State Water Pollution Control Board and disposing of said water in the San Joaquin River, to file an application to appropriate an equal amount of water, less diminution by seepage, evaporation, transportation or other natural causes between the point of discharge and the point of recovery, downstream from the disposal plant and out of the San Joaquin River or the Sacramento-San Joaquin Delta. It authorizes the State Water Rights Board to grant such a permit 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. Such application and permit may not include water flowing in underground streams.

The proponents of the bill were representatives of the City of Stockton, who argued that cities would be encouraged to improve their sewerage disposal plants if they are permitted to appropriate an amount of water equivalent to that which they discharge into a stream from such disposal plants. However, there is nothing in the present law which would prevent such cities from filing applications for the appropriation of water from the San Joaquin River and Delta or from any other river or stream. If unappropriated water is made available by discharges into the stream, anyone, including the discharger, under existing law may file an application for its appropriation. In our opinion the bill unnecessarily clutters up the Water Code and does not confer any additional right or authority which does not already exist. Further, the bill is technically

deficient in that it applies only to municipalities and subdivisions operating sewerage disposal plants producing disposal water meeting the requirements of the State Water Pollution Control Board. Normally, disposal requirements are imposed by the regional water pollution control boards rather than the State Water Pollution Control Board. The latter may prescribe requirements only when a regional board fails to take or obtain appropriate action (Water Code, Section 13025).

We therefore recommend that SB 1346 not be approved.


Director

Roberts
called

7-19-61

BILL MEMORANDUM

Date: July 18, 1961

To: GOVERNOR BROWN

From: Alexander H. Pope

Senate

BILL No. 1346

By Short

VOTE: Senate 22 ayes 14 noes - Backstrand, Byrne, Cameron, Cobey, Fisher, Grunsky, Holmdahl, Murdy, Quick, Rattigan, Richards, Stiern, J.H. Williams and Robt.D. Williams
Assembly Unanimous

Authorizes public agencies operating sewerage disposal plants, which discharge disposal water into the San Joaquin River, to file applications with the State Water Rights Board for permits to appropriate an equal amount of water, downstream from the disposal plant. Provides that permits to appropriate such water may be granted by the Water Rights Board upon such terms as it considers necessary for the protection of the rights of others. Provides that water so appropriated may be sold or utilized for any beneficial purpose.

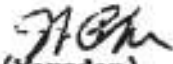
Legislative Counsel and Attorney General's Office have no legal objections, except that the Attorney General's Office questions the effectiveness of the provision that the sewage disposal plants must meet the requirements of the State Water Pollution Control Board. Actually the State Board does not normally set requirements for discharges into streams, and in fact has established no discharge requirement affecting the San Joaquin River.

State Water Pollution Control Board sees nothing in the bill that would pose a problem insofar as it relates to the operations of the water pollution control boards, but apparently agrees with the Attorney General's Office that it lacks the power to establish requirements for discharge of disposal waters into the San Joaquin River. Possibly the Central Valley Regional Water Pollution Control Board would have this power, and the bill might be construed as referring to the Regional Board. Unless so construed, the bill would seem to be meaningless, insofar as it refers to meeting the requirements of the State Water Pollution Control Board.

Department of Water Resources recommends that the bill not be approved. The proponents of the bill were representatives of the City of Stockton, who argued that cities would be encouraged to improve their sewerage disposal plants if they were permitted to appropriate downstream an amount of water equivalent to that which they discharged into the stream from the plants. However, there is nothing in the present law which would prevent such cities from filing applications for appropriation of water from the San Joaquin River and Delta, or from any other streams. If unappropriated water is made available by discharges into the stream, anyone, including the discharger, may file applications for its appropriation.

Therefore, the bill unnecessarily clutters up the Water Code, and does not confer any rights which do not already exist. Further, the bill is technically deficient in its reference to meeting the requirements of the State Water Pollution Control Board. Normally, disposal requirements are imposed by the regional boards rather than the state board. The state board may prescribe requirements only when a regional board fails to take appropriate action.

Senator Short, the author, urges favorable consideration of the bill.

Recommendation: Pocket Veto  (Marsden)

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

STATUTES OF CALIFORNIA
REGULAR SESSION

1961

Began Monday, January 2, 1961, and Adjourned
Friday, June 16, 1961

available for construction of state highways in County Group No. 1, as specified in Section 187 of the Streets and Highways Code, to the Department of Public Works to carry out the investigation and study required by Section 1 of this act. The California Toll Bridge Authority shall return said appropriation, or so much thereof as may be used, together with interest thereon at the rate of one and one-half percent (1½%) per annum, to be computed on the total amount withdrawn during any one year, to the State Highway Fund in the State Treasury from the proceeds of the first sale of revenue bonds issued for the construction of any toll bridge, toll tube, or other toll highway crossing under the provisions of the California Toll Bridge Authority Act between the City and County of San Francisco and the County of Marin; provided, that in the event revenue bonds are not issued and sold for the construction thereof, any money expended from this appropriation shall be returned to the State Highway Fund from that portion of the San Francisco-Oakland Bay Bridge Toll Revenue Fund other than from the tolls of the existing San Francisco-Oakland Bay Bridge or of any other bridge or bridges which are deposited in said fund. The moneys required to be repaid by this section shall be credited to the money available for the construction of state highways in County Group No. 1, as specified in Section 187 of the Streets and Highways Code.

CHAPTER 2143

An act to add Article 6 (commencing with Section 1485) to Chapter 7, Part 2, Division 2 of the Water Code, relating to appropriation of water.

[Approved by Governor July 19, 1961. Filed with
Secretary of State July 20, 1961.]

In effect
September
15, 1961

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

SECTION 1. Article 6 (commencing with Section 1485) is added to Chapter 7, Part 2, Division 2 of the Water Code, to read:

Article 6. Applications by Governmental Agencies Discharging Disposal Water

1485. Any municipality, governmental agency, or political subdivision operating sewerage disposal plants producing disposal water meeting the requirements of the State Water Pollution Control 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 State Water Rights 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 Joaquin Delta into which it flows, are unique and that a general law cannot be made applicable thereto.

CHAPTER 2144

An act to add Section 9362 to the Education Code, relating to school textbooks.

In effect
September
15, 1961

[Approved by Governor July 19, 1961. Filed with
Secretary of State July 20, 1961.]

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

SECTION 1. Section 9362 is added to the Education Code, to read:

9362. In order to insure competition and to provide the State a basis upon which to compare costs, the State Board of Education shall request all persons presenting textbooks for adoption by it for use in the elementary schools to submit a list of comparative prices for each textbook presented calculated on each of the following bases:

(a) The sale of the completed textbooks to the State.

(b) The lease of plates and other material to the State for the printing of such textbooks by the State.

This section shall not be construed to require that the board reject any bid for the sale of textbooks or the lease of plates or other materials if the bidder fails to submit the comparative prices specified in this section.

CHAPTER 2145

An act to amend Section 16315 of the Government Code, relating to state expenditures.

In effect
September
15, 1961

[Approved by Governor July 19, 1961. Filed with
Secretary of State July 20, 1961.]

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

SECTION 1. Section 16315 of the Government Code is amended to read:

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

L450
S93
1961

GPS RM REF



0 2007 1028921 2
California State Library

SUMMARY DIGEST

of

STATUTES ENACTED

and

Proposed Constitutional Amendments
Submitted to the Electors
Including
Table of Sections Affected'

California Legislature
1961 Regular Session



J. A. Beek
Secretary of the Senate

Arthur A. Ohnimus
Chief Clerk of the Assembly

Compiled by
Ralph N. Kleps
Legislative Counsel

S.B. 1341 (Ch. 1809). BEGOVICH. Amends Sec. 28152, Gov.C., re compensation of Amador County officers.

Increases annual salary of auditor from \$2,700 to \$3,900 and of district attorney from \$4,200 to \$7,800. Gives chairman of board of supervisors additional \$600 a year for his services as chairman.

S.B. 1346 (Ch. 2143). SHORT. Adds Art. 6, Ch. 7, Pt. 2, Div. 2, Wat.C., re appropriation of water.

Authorizes public agency operating sewerage disposal plants producing disposal water meeting requirements of State Water Pollution Control Board, and disposing of said water in San Joaquin River, to file application for permit to appropriate equal amount of water, less certain diminutions thereof between point of discharge and point of recovery, downstream from said disposal plant and out of San Joaquin River or Sacramento-San Joaquin Delta. Authorizes State Water Rights Board to grant permit upon such terms and conditions it deems necessary for protection of rights of others.

S.B. 1349 (Ch. 980). MURDY. Amends Sec. 651, H. & N.C., re vessels subject to operation, equipment, and registration requirements.

Excludes from definition of "vessel" watercraft specifically designed to operate on permanently fixed course, movement of which is restricted to or guided on such course by mechanical device on fixed track or arm to which watercraft is attached or by which watercraft is controlled, or by mechanical device attached to watercraft itself.

S.B. 1351 (Ch. 1659). COLLIÈR. Amends various secs., Veh.C., re construction equipment.

Revises definition of construction equipment exempt from registration, lighting, and width provisions of Vehicle Code to include vehicle used primarily off highways for construction purposes or construction or maintenance work on railroad rights of way and which move only occasionally over highways and which may not move over highway without permit because of their height, length, width or unladen weight. Designates such equipment, as well as presently exempt highway construction equipment, as "special construction equipment," and, in addition, includes "water wagons, speed swings, skip loaders, and weed mowers" in definition.

S.B. 1352 (Ch. 1810). RATTIGAN. Amends Sec. 2370, adds Secs. 2372, 2375, W. & I.C., re Citizens' Advisory Committee on Aging.

Describes functions of committee as: study of problems of aged, consultation to communities to develop programs for needs of senior citizens, assist state agencies, act as clearing house and information center on all aspects of aging. Requires commission to submit annual report to Governor.

S.B. 1354 (Ch. 1660). RODDA. Amends Sec. 28108, Gov.C., to increase annual compensation of each member of board of supervisors of Sacramento County from \$5,400 to \$7,200.

S.B. 1356 (Ch. 1372). STIERN. Amends Sec. 8001, adds Secs. 8001.5, 8027, B. & P.C., re shorthand reporters.

Provides for 4-year, instead of 3-year, terms of office of members of Certified Shorthand Reporters Board and designates expiration dates of terms of members in office on effective date of act.

Provides that adjudication of insanity or mental illness, or voluntary commitment, or admission to state hospital shall operate as suspension of right to practice of licensed shorthand reporter.

S.B. 1357 (Ch. 1014). STIERN. Adds Sec. 4226.5, B. & P.C., re dangerous drugs.

Authorizes licensed pharmacy, licensed wholesaler, or licensed manufacturer of drugs to furnish physician and surgeon, dentist, podiatrist, or veterinarian with hypnotic drugs for administration to patients as authorized by law upon receipt of order giving specified information. Requires order to be signed by practitioner and placed on file by supplier.



Volume 3

Journal of the Senate

Legislature of the State of California
1961 Regular Session

January Second to June Sixteenth



HON. GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

J. A. BEEK
Secretary

S.B. No.	
1338	Introduced, read first time, to committee, 1802; returned by committee without action 4495
1339	Introduced, read first time, to committee, 1802; returned by committee without action 4495
1340	Introduced, read first time, to committee, 1802; from committee, 2746; read second time, 2862; read third time, passed, title approved, to Assembly, 3030; from Assembly, to unfinished business file, 4167; Assembly amendments not concurred in, Senate appoints conference committee, 4332; Assembly appoints conference committee, 4340; Assembly adopts conference report, 4438; Senate adopts conference report, 4434; to enrollment, 4438; to Governor 4528
1341	Introduced, read first time, to committee, 1803; from committee, 3047; read second time, 3097; read third time, passed, title approved, to Assembly, 3229; from Assembly, to enrollment, 3877; to Governor 4491
1342	Introduced, read first time, to committee, 1803; from committee, 3088; read, amended and re-referred to committee, 3155; returned by committee without action 4495
1343	Introduced, read first time, to committee, 1803; returned by committee without action 4495
1344	Introduced, read first time, to committee, 1803; returned by committee without action 4495
1345	Introduced, read first time, to committee, 1803; returned by committee without action 4505
1346	Introduced, read first time, to committee, 1803; Constitution suspended, 2220; from committee, amended, re-referred to committee, 2368; from committee, 2695; read, amended and re-referred to committee, 2795; from committee, 2901; read second time, amended, 2986; read third time, passed, title approved, to Assembly, 3073, 3077; from Assembly, to unfinished business file, 3736; Assembly amendments concurred in, to enrollment, 3858; to Governor 3879
1347	Introduced, read first time, to committee, 1803; returned by committee without action 4498
1348	Introduced, read first time, to committee, 1803; from committee, re-referred to committee, 2836; returned by committee without action 4503
1349	Introduced, read first time, to committee, 1803; from committee, amended, re-referred to committee, 2751; from committee, 3046; read second time, 3095; read third time, passed, title approved, to Assembly, 3227; from Assembly, to enrollment, 3923; to Governor 4511
1350	Introduced, read first time, to committee, 1803; from committee, 3195; read second time, amended, 3289; Joint Rule suspended, 3373; read third time, passed, title approved, to Assembly, 3377; from Assembly without further action 4492
1351	Introduced, read first time, to committee, 1804; from committee, 3191; read second time, amended, 3284; Joint Rule suspended, 3373; read third time, passed, title approved, to Assembly, 3395; from Assembly, to unfinished business file, 3924; Assembly amendments concurred in, to enrollment, 4200; to Governor 4523
1352	Introduced, read first time, to committee, 1804; from committee, amended, re-referred to committee, 2784; from committee, 2904; read second time, amended, 2996; read third time, passed, title approved, to Assembly, 3111; Assembly amendments concurred in, to enrollment, 4451; to Governor 4528
1353	Introduced, read first time, to committee, 1804; from committee, re-referred to committee, 2746; from committee, amended, re-referred to committee, 2784; returned by committee without action 4503
1354	Introduced, read first time, to committee, 1804; from committee, 3047; read second time, 3098; read third time, passed, title approved, to Assembly, 3229; from Assembly, to unfinished business file, 4228; Assembly amendments not concurred in, 4325; Senate appoints conference committee, 4326; Assembly appoints conference committee, 4340; Assembly adopts conference report, 4341; Senate appoints conference committee, 4428; Assembly appoints conference committee, 4342; Senate adopts conference report, 4475; to enrollment, 4475; to Governor 4528
1355	Introduced, read first time, to committee, 1804; from committee, 2836; read second time, amended, 2922; read third time, passed, title approved, to Assembly, 3082; from Assembly, to committee, 3611; returned by committee without action 4503
1356	Introduced, read first time, to committee, 1804; from committee, 2836; read second time, 2923; read third time, passed, title approved, to Assembly, 3082; from Assembly, to enrollment, 4167; to Governor 4523

INDEX

SENATE BILLS—Continued

- No.
- 1340 In Assembly, 4285; read first time, to committee, 4287; from committee: Do pass, and be placed on the Consent Calendar, read second time, to Consent Calendar, 5258; from Consent Calendar, 5307; considered by unanimous consent, read third time, amended, 5308; read third time, passed, to Senate, 5348; amendments refused concurrence, Senate appoints conference committee, Assembly appoints conference committee, 5397; Assembly adopts conference report, 5440; Senate adopts conference report, 6032
- 1341 In Assembly, 4579; read first time, to committee, 4582; from committee: Do pass, 5202; read second time, 5203; read third time, passed, to Senate, 5321
- 1340 In Assembly, 4404; read first time, to committee, 4467; from committee: Do pass, as amended, 5047; read second time, amended, 5009; on second reading pursuant to Rules, 5102; read third time, passed, to Senate, 5234; Assembly amendments concurred in, 5300
- 1349 In Assembly, 4579; read first time, to committee, 4582; from committee: Do pass, and be placed on the Consent Calendar, 5148; read second time, to Consent Calendar, 5174; read third time, passed, to Senate, 5498
- 1350 In Assembly, 4884; read first time, to committee, 4887; from committee without further action, to Senate, 6132
- 1351 In Assembly, 4884; read first time, to committee, 4888; from committee: Do pass, as amended, 5393; read second time, amended, 5394; read third time, passed, to Senate, 5489; Assembly amendments concurred in, 5759
- 1352 In Assembly, 4401; read first time, to committee, 4463; from committee with author's amendments: Amend, and be re-referred to committee; read second time, Rule suspended, permit addition of co-authors, amended, ordered reprinted, re-referred to committee, 4762; from committee: Do pass, and be placed on the Consent Calendar, 5006; read second time, to Consent Calendar, 5006; re-referred to Committee on Ways and Means pursuant to Rules, 5070; from committee with author's amendments: Amend, and be re-referred to committee, read second time, 5295; Rules suspended, permit addition of co-authors, amended, re-referred to committee, 5296; from committee: Do pass, and be placed on the Consent Calendar, 5698; read second time, to Consent Calendar, 5699; read third time, passed, to Senate, 5859; Assembly amendments concurred in, 6108
- 1354 In Assembly, 4579; read first time, to committee, 4582; from committee: Do pass, as amended, 5027; read second time, amended, 5628; read third time, passed, to Senate, 5782; name added to roll call, vote changed on roll call, 5828; amendments refused concurrence, Senate appoints conference committee, 5913; Assembly appoints conference committee, 5914; Senate appoints second conference committee, Assembly appoints second conference committee, 6036; second conference report read, call of Assembly, 6114; Senate adopts second conference report, 6118; call of Assembly dispensed with, Assembly adopts second conference report, 6119
- 1355 In Assembly, 4464; read first time, to committee, 4467; from committee: Subject matter to be assigned by Senate Rules Committee for interim study (Joint Rule 21.5); to Senate, 5090
- 1356 In Assembly, 4464; read first time, to committee, 4467; from committee: Do pass, and be placed on the Consent Calendar, 5089; read second time, to Consent Calendar, 5104; re-referred to Committee on Ways and Means pursuant to Rules, 5105; from committee: Do pass, and be placed on the Consent Calendar, read second time, to Consent Calendar, 5681; read third time, passed, to Senate, 5721
- 1357 In Assembly, 4464; read first time, to committee, 4467; from committee: Do pass, and be placed on the Consent Calendar, 5149; read second time, to Consent Calendar, 5175; read third time, passed, to Senate, 5499
- 1359 In Assembly, 4481; read first time, to committee, 4483; from committee: Do pass, as amended, and be placed on the Consent Calendar, 5154; read second time, amended, to Consent Calendar, 5178; read third time, passed, to Senate, 5490; Assembly amendments concurred in, 5759
- 1800 In Assembly, 4481; read first time, to committee, 4484; from committee: Do pass, as amended, and be placed on the Consent Calendar, 5253; read second time, amended, to Consent Calendar, 5254; read third time, passed, to Senate, 5515; Assembly amendments concurred in, 5759
- 1361 In Assembly, 4464; read first time, to committee, 4467; from committee: Do pass, read second time, 5249; read third time, passed, to Senate, 5527
- 1802 In Assembly, 4285; read first time, to committee, 4287; from committee: Do pass, and be placed on the Consent Calendar, read second time, to Consent Calendar, 5248; read third time, passed, to Senate, 5509
- 1363 In Assembly, 4464; read first time, to committee, 4467; from committee: Be amended, and re-referred, 5273; read second time, amended, re-referred to committee, 5274; read second time, to Consent Calendar, 5391; read third time, passed, to Senate, 5586; Assembly amendments concurred in, 5801

CALIFORNIA LEGISLATURE
AT SACRAMENTO
1967 REGULAR SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT
AND JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened January 2, 1967
Recessed March 17, 1967
Reconvened March 27, 1967
Constitutional Recess August 4, 1967
Reconvened September 4, 1967
Adjourned Sine Die September 8, 1967

Legislative Days 142
Calendar Days 250

Last Day for Filing Referendum, November 7, 1967

All Bills Chaptered, Unless Otherwise Specifically Provided for in the
Bill, Become Effective November 8, 1967

HON. JESSE M. UNRUH
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. GEORGE N. ZENOVICH
Majority Floor Leader

HON. ROBERT T. MONAGAN
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

WILLOUGHBY LYONS
History Clerk

163—Porter, Chappie, Ray E Johnson, Belotti, Collier, Harvey Johnson, Lanterman, Monagan, Quimby, Russell, Stull, Stacey, Moorhead, Mobley, and Hinckley (Senator Cologne, coauthor).
To Com. on Water.

An act to amend the heading of Article 3 (commencing with Section 175) of Chapter 2, Division 1 of, Sections 175, 177, 179, 181, 182, 183, 186, 187, 229, 1003 5, 1051 5, 1060, 1241 6, 1243, 1485, 10500, 10504, 10504.1, 10504 5, 12232, 12233, 13000, 13000 2, 13001, 13003, 13005, of, the heading of Chapter 3 (commencing with Section 13010) of Division 7, of, the heading of Article 2 (commencing with Section 13020) of Chapter 3 of Division 7 of, Sections 13022 2, 13022.3, 13025.5, 13050 and 20627 of, to amend and renumber Sections 13020.1 and 13020 2 of, to add Sections 25, 174, 179.6, 179 7, 1258, 6056, Article 1 (commencing with Section 13015) to Chapter 3 of Division 7 of, and Section 13025 7 to, and to repeal Article 1 (commencing with Section 13010) of Chapter 3 of Division 7 and Sections 13020, 13021, and 13026 of, the Water Code, to amend Section 10500 of the Water Code, as amended by Assembly Bill No. 1222 of the 1967 Regular Session, and to amend Sections 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Water Pollution Control Law of 1965 (Chapter 1351 of the Statutes of 1965), relating to water resources.

Jan. 18—Read first time. Held at desk.

Jan. 19—Referred to committee. To print.

Jan. 21—From print To committee.

Mar. 31—From committee chairman, with author's amendments: Amend, and re-refer to Com. on Water. Read second time, amended, to print

April 3—From print. To engrossment.

April 4—Reported correctly engrossed Re-referred to Com. on Water.

April 14—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred to Com. on W. & M.

April 20—From committee: Do pass.

April 24—Read second time. To third reading.

April 25—Read third time, passed, title approved. To Senate

April 25—In Senate. Read first time To Com. on Wat Res

April 26—From committee chairman, with author's amendments Amend, and re-refer to Com on Wat. Res Read second time, amended, to print and to committee

May 3—From committee: Do pass, and re-refer to Com. on Fin. Re-referred to Com. on Fin.

May 9—From committee: Amend, and do pass as amended.

May 10—Read second time, amended, to print and to third reading.

May 23—Read third time, passed, title approved To Assembly.

May 24—In Assembly. Concurrence in Senate amendments pending.

May 25—Senate amendments concurred in. To enrollment.

June 1—Enrolled and to the Governor at 10 a m.

June 7—Signed by the Governor. Chapter 284

ASSEMBLY BILL

No. 163

Introduced by Assemblymen Porter, Chappie, Ray E. Johnson, Belotti, Collier, Harvey Johnson, Lanterman, Monagan, Quimby, and Russell

January 18, 1967

REFERRED TO COMMITTEE ON WATER

An act to amend Section 123 of, the heading of Article 3 (commencing with Section 175) of Chapter 2, Division 1 of, Sections 175, 177, 179, 181, 183, 186, 187, 226, 1003.5, 1051.5, 1060, 1241.6, 1243, 1485, 4025, 4029, 4030, 4050, 4051, 4052, 4100, 4101, 4103, 4104, 4125, 4126, 4150, 4200, 4201, 4225, 4228, 4275, 4277, 4300, 4302, 4305, 4326, 4329, 4331 of, Sections 4400, 4401, 4402, 4403, 4404, 4405, 4406, 4407, 6002, 6027, 6028, 6030, 6052, 6053, 6054, the heading of Chapter 4 (commencing with Section 6075), Part 1, Division 3 of, Sections 6075, 6076, 6077, 6078, 6079, 6080, 6081, 6100, 6101, 6102, 6110, 6111, 6112, 6113, 6120, 6121, 6150, 6151, 6200, 6201, 6202, 6203, 6204, 6206, 6225, 6226, 6228, 6229, 6230, 6251, 6252, 6260, 6261, 6262, 6263, 6266, 6267, 6304, 6305, 6306, 6307, 6350, 6352, 6354, 6355, 6357, 6357.1, 6357.2, 6357.3, 6357.4, 6360, 6362, 6363, 6370, 6372, 6380, 6381, 6382, 6390, 6391, 6392, 6393, 6400, 6401, 6403, 6404, 6406, 6407, 6425, 6426, 6427, 6450, 6451, 6455, 6456, 6457, 6459, 6460, 6461, 6465, 6466, 6470, 10500, 10504, 10504.1, 10504.5,

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as introduced, Porter (Water). Water Resources Control Board.

Amends, adds, and repeals various secs., Wat.C., F. & G.C., and Ch. 1351, Stats. 1965.

Abolishes State Water Rights Board and the State Water Quality Control Board and establishes State Water Resources Control Board within the Resources Agency.

Vests in the board all state power and responsibility relative to the supervision of: (1) water appropriation pursuant to permit or license; (2) water pollution and water quality; (3) dam safety; and (4) water-master services.

To become operative on first day of month following the effective date of the act.

Vote—Majority; Appropriation—No; State Expense—Yes.

12232, 12233, 13000, 13000.2, 13001, 13003, 13005, of, the heading of Chapter 3 (commencing with Section 13010) of Division 7 of, the heading of Article 2 (commencing with Section 13020) of Chapter 3 of Division 7 of, Sections 13022.2, 13022.3, 13025.5, 13050, and 20627 of, to amend and renumber Sections 13020.1 and 13020.2 of, to add Sections 25, 174, 179.6, 179.7, 183.5, 189, 1258, 6001, Article 1 (commencing with Section 13015) to Chapter 3 of Division 7 of, and Section 13025.7 to, and to repeal Article 3 (commencing with Section 275) of Chapter 2.5, Division 1, Article 1 (commencing with Section 13010) of Chapter 3 of Division 7 and Sections 13020, 13021, and 13026 of, the Water Code, and to amend Sections 5933, 5946, 5988, 5989, 5992, and 6024 of the Fish and Game Code, and to amend Sections 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Water Pollution Control Law of 1965 (Chapter 1351 of the Statutes of 1965), relating to water resources.

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

1 SECTION 1. Section 25 is added to the Water Code, to
2 read:

3 25. "Board," unless otherwise specified, means the Water
4 Resources Control Board.

5 SEC. 1.3. Section 123 of the Water Code is amended to
6 read:

7 123. Except as provided in Section 179, the department
8 succeeds to and is vested with all of the powers, duties, pur-
9 poses, responsibilities, and jurisdiction in matters pertaining
10 to water or dams vested in the department and Director of
11 Public Works, the Division of Water Resources of the Depart-
12 ment of Public Works, the State Engineer, the Water Project
13 Authority of the State of California, or any officer or em-
14 ployee thereof. The department also succeeds to and is vested
15 with all of the powers, duties, purposes, responsibilities, and
16 jurisdiction of the Department of Finance under Part 2 (com-
17 mencing at Section 10500) of Division 6. The department suc-
18 ceeds to and is vested with all of the powers, duties, purposes,
19 responsibilities, and jurisdiction vested in the State Water
20 Resources Board, except as provided in Article 2 (commencing
21 at Section 150) of Chapter 2 of this division.

22 Any commission or other body heretofore or hereafter cre-
23 ated by the Legislature to formulate a compact with a similar
24 commission or body from another state relative to the distri-
25 bution and use of the waters of any interstate streams or
26 bodies of water, including but not limited to the California
27 Klamath River Commission and the California-Nevada Inter-
28 state Compact Commission, shall, in formulating a provision
29 in any such compact for the administration of the terms of
30 the compact, provide that the Department of Water Resources
31 shall be the representative of the State of California for the
32 purpose of such administration.

1 cept fees collected under Part 3 (commencing ~~at~~ *with* Section
2 2000) of this division, funds received for trial distribution ex-
3 penses in connection with the administration of Section 1051.5,
4 and deposits and payments made pursuant to Section 5007,
5 *and payments made to the board in connection with its water-*
6 *master service functions*, shall be credited to the appropriation
7 for the support of the board which is current at the time of the
8 deposit of such fees in the State Treasury.

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

16 SEC. 7.6. Section 1241.6 of the Water Code is amended
17 to read:

18 1241.6. When water appropriated for irrigation purposes
19 is not used by reason of compliance with crop control or soil
20 conservation contracts with the United States, and in other
21 cases of hardship as the ~~State Water Rights Board~~ *board* may
22 by rule prescribe, the three-year forfeiture period applicable
23 to water appropriated pursuant to the Water Commission
24 Act or this code, and the forfeiture period applicable to water
25 appropriated prior to December 19, 1914, shall be extended
26 by an additional period of not more than 10 years or the dura-
27 tion of any crop control or soil conservation contracts with the
28 United States if less than 10 years.

29 SEC. 7.7. Section 1243 of the Water Code is amended to
30 read:

31 1243. The use of water for recreation and preservation
32 and enhancement of fish and wildlife resources is a beneficial
33 use of water. In determining the amount of water available
34 for appropriation for other beneficial uses, the ~~State Water~~
35 ~~Rights Board~~ *board* shall take into account, whenever it is in
36 the public interest, the amounts of water required for recrea-
37 tion and the preservation and enhancement of fish and wildlife
38 resources.

39 This section shall not be construed to affect riparian rights.

40 SEC. 7.8. Section 1258 is added to the Water Code, to read:

41 1258. In acting upon applications to appropriate water,
42 the board shall consider water quality objectives which have
43 been established pursuant to law, and may subject such appro-
44 priations to such terms and conditions as it finds are necessary
45 to carry out such objectives.

46 SEC. 8. Section 1485 of the Water Code is amended to
47 read:

48 1485. Any municipality, governmental agency, or political
49 subdivision operating sewerage disposal plants producing dis-
50 posal water meeting the requirements of the ~~State Water Pol-~~
51 ~~lution Control Board~~ *board*, and disposing of said water in
52 the San Joaquin River may file an application for a permit

1 to appropriate an equal amount of water, less diminution by
2 seepage, evaporation, transpiration or other natural causes
3 between the point of discharge and the point of recovery,
4 downstream from said disposal plant and out of the San Joa-
5 quin River or the Sacramento-San Joaquin Delta. A permit to
6 appropriate such amount of water may be granted by the State
7 ~~Water Rights Board~~ *board* upon such terms and conditions
8 as in the board's judgment are necessary for the protection of
9 the rights of others. Water so appropriated may be sold or
10 utilized for any beneficial purpose. The right to the use of
11 water granted by this section shall not include water flowing
12 in underground streams.

13 The Legislature finds and declares that the problems inci-
14 dent to the full utilization of the waters of the San Joaquin
15 River and the Sacramento-San Joaquin Delta into which it
16 flows, are unique and that a general law cannot be made appli-
17 cable thereto.

18 SEC. 9. Section 4025 of the Water Code is amended to
19 read:

20 4025. The ~~department~~ *board* shall divide the state into
21 watermaster service areas so constituted and adjusted as to
22 insure the most practical and economical supervision of the
23 distribution of water on the part of the state.

24 SEC. 10. Section 4029 of the Water Code is amended to
25 read:

26 4029. Upon the creation of a service area the ~~department~~
27 *board* shall record in the office of the county recorder of each
28 county in which a portion of the service area is situated a cer-
29 tified copy of the order creating the service area and a de-
30 scription by 40-acre subdivision or other smallest subdivisions
31 of the public land surveys of all of the land within the service
32 area which is within the county in which the description is
33 recorded.

34 SEC. 11. Section 4030 of the Water Code is amended to
35 read:

36 4030. From time to time the ~~department~~ *board* shall record
37 supplemental or revised descriptions as the descriptions are
38 changed.

39 SEC. 12. Section 4050 of the Water Code is amended to
40 read:

41 4050. Upon written request of the owners or governing
42 bodies of at least 15 percent of the conduits lawfully entitled
43 to directly divert water from the streams or other sources of
44 water supply in any service area, the ~~department~~ *board* may,
45 if in its discretion necessity therefor exists, appoint a water-
46 master and if necessary in its discretion one or more deputy
47 watermasters for the service area.

48 SEC. 13. Section 4051 of the Water Code is amended to
49 read:

50 4051. The ~~department~~ *board* may from time to time discon-
51 tinue watermaster service in any service area, if necessity

1 Board shall submit to the Legislature a progress report indi-
2 cating the status of the investigation to date.

3 SEC. 162. Section 10 of the Water Pollution Control Law
4 of 1965 is amended to read:

5 Sec. 10. The State Water ~~Quality Resources~~ Control Board
6 shall submit a report on the San Francisco Bay-delta area
7 study to the Legislature on or before the fifth legislative day
8 of 1969 Regular (Budget) Session. The report shall include,
9 but is not necessarily limited to, the following:

10 (a) Recommendations for regional waste collection, treat-
11 ment and disposal system and other means of maintaining
12 proper quality levels for the water concerned, which will pro-
13 vide guidelines for the systematic development of a compre-
14 hensive pollution control program.

15 (b) Overall cost estimates for the construction and opera-
16 tion of the recommended plan.

17 (c) Recommendations for the form of governmental entity
18 or authority which would be best able to further develop and
19 implement a comprehensive water pollution control plan and
20 program.

21 (d) Recommendations as to the equitable apportionment
22 of cost of development, construction and operation among the
23 various beneficiaries of the plan.

24 (e) Recommendations as to the schedule for staged devel-
25 opment of the various phases of the comprehensive plan.

26 (f) Delineation of the major subject areas, with estimates
27 of cost, for additional studies which are considered essential
28 to the further development of a regional, comprehensive water
29 pollution control plan in the San Francisco Bay-delta area.

30 SEC. 163. Section 11 of the Water Pollution Control Law
31 of 1965 is amended to read:

32 Sec. 11. Before completion of the reports required by
33 Sections 8 and 9 of this act, the State Water ~~Quality Resources~~
34 Control Board and the California Water Commission shall
35 jointly hold at least three public hearings in both the areas of
36 the receiving waters and the sources of drainage discharge. In
37 formulating its final recommendations for these reports, the
38 State Water ~~Quality Resources~~ Control Board shall give full
39 consideration to the views of the California Water Commission
40 and the recommendations of said commission shall be trans-
41 mitted to the Legislature as a part of said reports.

42 SEC. 164. This act shall become operative on the first day
43 of the month following the effective date of the act.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN ASSEMBLY MARCH 31, 1967

CALIFORNIA LEGISLATURE—1967 REGULAR SESSION

ASSEMBLY BILL

No. 163

Introduced by Assemblymen Porter, Chappie, Ray E. Johnson, Belotti,
Collier, Harvey Johnson, Lanterman, Monagan, Quimby, and Russell

January 18, 1967

REFERRED TO COMMITTEE ON WATER

An act to amend Section 123 of, the heading of Article 3 (commencing with Section 175) of Chapter 2, Division 1 of, Sections 175, 177, 179, 181, 182, 183, 186, 187, 226, 229, 1003.5, 1051.5, 1060, 1241.6, 1243, 1485, 4025, 4029, 4030, 4050, 4051, 4052, 4100, 4101, 4103, 4104, 4125, 4126, 4150, 4200, 4201, 4225, 4228, 4275, 4277, 4300, 4302, 4305, 4326, 4329, 4331 of, Sections 4400, 4401, 4402, 4403, 4404, 4405, 4406, 4407, 6002, 6027, 6028, 6030, 6052, 6053, 6054, the heading of Chapter 4 (commencing with Section 6075), Part 1, Division 3 of, Sections 6075, 6076, 6077, 6078, 6079, 6080, 6081, 6100, 6101, 6102, 6110, 6111, 6112, 6113, 6120, 6121, 6150, 6151, 6200, 6201, 6202, 6203, 6204, 6206, 6225, 6226, 6228, 6229, 6230, 6251, 6252, 6260, 6261, 6262, 6263, 6266, 6267, 6304, 6305, 6306, 6307, 6350, 6352, 6354, 6355, 6357, 6357.1, 6357.2, 6357.3, 6357.4, 6360, 6362, 6363, 6370, 6372, 6380, 6381, 6382, 6390, 6391, 6392, 6393, 6400, 6401, 6403;

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as amended, Porter (Water). Water Resources Control Board.

Amends, adds, and repeals various secs., Wat.C., F. & G.C., and Ch. 1351, Stats. 1965.

Abolishes State Water Rights Board and the State Water Quality Control Board and establishes State Water Resources Control Board within the Resources Agency.

Vests in the board all state power and responsibility relative to the supervision of (1) water appropriation pursuant to permit or license; (2) and water pollution and water quality; (3) dam safety; and (4) watermaster services.

To become operative on first day of month following the effective date of the act.

Vote—Majority; Appropriation—No; State Expense—Yes.

6404, 6406, 6407, 6425, 6426, 6427, 6450, 6451, 6455, 6456, 6457, 6459, 6460, 6461, 6465, 6466, 6470, 6056, 10500, 10504, 10504.1, 10504.5, 12232, 12233, 13000, 13000.2, 13001, 13003, 13005, of, the heading of Chapter 3 (commencing with Section 13010) of Division 7 of, the heading of Article 2 (commencing with Section 13020) of Chapter 3 of Division 7 of, Sections 13022.2, 13022.3, 13025.5, 13050, and 20627 of, to amend and renumber Sections 13020.1 and 13020.2 of, to add Sections 25, 174, 179.6, 179.7, 183.5, 489, 1258, 6001, Article 1 (commencing with Section 13015) to Chapter 3 of Division 7 of, and Section 13025.7 to, and to repeal Article 2 (commencing with Section 275) of Chapter 2.5, Division 1, Article 1 (commencing with Section 13010) of Chapter 3 of Division 7 and Sections 13020, 13021, and 13026 of, the Water Code, and to amend Sections 5933, 5946, 5988, 5989, 5992, and 6024 of the Fish and Game Code, and to amend Sections 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Water Pollution Control Law of 1965 (Chapter 1351 of the Statutes of 1965), relating to water resources.

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

1 SECTION 1. Section 25 is added to the Water Code, to
2 read:

3 25. "Board," unless otherwise specified, means the *State*
4 Water Resources Control Board.

5 SEC. 1.3. Section 123 of the Water Code is amended to
6 read:

7 123. Except as provided in Section 179, the department
8 succeeds to and is vested with all of the powers, duties, pur-
9 poses, responsibilities, and jurisdiction in matters pertaining
10 to water or dams vested in the department and Director of
11 Public Works; the Division of Water Resources of the Depart-
12 ment of Public Works; the State Engineer, the Water Project
13 Authority of the State of California, or any officer or em-
14 ployee thereof. The department succeeds to and is vested with
15 all of the powers, duties, purposes, responsibilities, and juris-
16 diction vested in the State Water Resources Board, except as
17 provided in Article 2 (commencing at Section 150) of Chapter
18 2 of this division.

19 Any commission or other body heretofore or hereafter cre-
20 ated by the Legislature to formulate a compact with a similar
21 commission or body from another state relative to the distri-
22 bution and use of the waters of any interstate streams or
23 bodies of water, including but not limited to the California
24 Klamath River Commission and the California-Nevada Inter-
25 state Compact Commission, shall, in formulating a provision
26 in any such compact for the administration of the terms of
27 the compact, provide that the Department of Water Resources
28 shall be the representative of the State of California for the
29 purpose of such administration.

1 amounts of water required for recreation and the preservation
2 and enhancement of fish and wildlife resources.

3 This section shall not be construed to affect riparian rights.

4 SEC. 7.8. Section 1258 is added to the Water Code, to read:

5 1258. In acting upon applications to appropriate water,
6 the board shall consider water quality objectives which have
7 been established pursuant to law, and may subject such appro-
8 priations to such terms and conditions as it finds are necessary
9 to carry out such objectives.

10 SEC. 8. Section 1485 of the Water Code is amended to
11 read:

12 1485. Any municipality, governmental agency, or political
13 subdivision operating ~~sewerage~~ *waste* disposal plants producing
14 disposal water meeting the requirements of the *appropriate*
15 *regional* board, and disposing of said water in the San Joaquin
16 River may file an application for a permit to appropriate an
17 equal amount of water, less diminution by seepage, evapora-
18 tion, transpiration or other natural causes between the point
19 of discharge and the point of recovery, downstream from said
20 disposal plant and out of the San Joaquin River or the Sacra-
21 mento-San Joaquin Delta. A permit to appropriate such
22 amount of water may be granted by the board upon such terms
23 and conditions as in the board's judgment are necessary for
24 the protection of the rights of others. Water so appropriated
25 may be sold or utilized for any beneficial purpose. The right
26 to the use of water granted by this section shall not include
27 water flowing in underground streams.

28 The Legislature finds and declares that the problems inci-
29 dent to the full utilization of the waters of the San Joaquin
30 River and the Sacramento-San Joaquin Delta into which it
31 flows, are unique and that a general law cannot be made appli-
32 cable thereto.

33 SEC. 9. Section 4025 of the Water Code is amended to
34 read:

35 4025. The board shall divide the state into watermaster
36 service areas so constituted and adjusted as to insure the most
37 practical and economical supervision of the distribution of
38 water on the part of the state.

39 SEC. 10. Section 4029 of the Water Code is amended to
40 read:

41 4029. Upon the creation of a service area the board shall
42 record in the office of the county recorder of each county in
43 which a portion of the service area is situated a certified copy
44 of the order creating the service area and a description by
45 40-acre subdivision or other smallest subdivisions of the public
46 land surveys of all of the land within the service area which
47 is within the county in which the description is recorded.

48 SEC. 11. Section 4030 of the Water Code is amended to
49 read:

50 4030. From time to time the board shall record supple-
51 mental or revised descriptions as the descriptions are changed.

1 (d) Recommendations as to the equitable apportionment
2 of cost of development, construction and operation among the
3 various beneficiaries of the plan.

4 (e) Recommendations as to the schedule for staged devel-
5 opment of the various phases of the comprehensive plan.

6 (f) Delineation of the major subject areas, with estimates
7 of cost, for additional studies which are considered essential
8 to the further development of a regional, comprehensive water
9 pollution control plan in the San Francisco Bay-delta area.

10 SEC. 163. Section 11 of the Water Pollution Control Law
11 of 1965 is amended to read:

12 Sec. 11. Before completion of the reports required by
13 Sections 8 and 9 of this act, the State Water Resources
14 Control Board and the California Water Commission shall
15 jointly hold at least three public hearings in both the areas of
16 the receiving waters and the sources of drainage discharge. In
17 formulating its final recommendations for these reports, the
18 State Water Resources Control Board shall give full consider-
19 ation to the views of the California Water Commission and
20 the recommendations of said commission shall be transmitted
21 to the Legislature as a part of said reports.

22 *SEC. 163.5. It is the intent and purpose of the Legis-*
23 *lature by this act to further the concept of the original Dickey*
24 *Water Pollution Act for regional water pollution control*
25 *which has proven, over the years, to be the best means of in-*
26 *volving all levels of government in accomplishing cooperative*
27 *and effective control of water pollution and water quality.*

28 SEC. 164. This act shall become operative on the first day
29 of the month following the effective date of the act.

AMENDED IN SENATE APRIL 26, 1967

AMENDED IN ASSEMBLY MARCH 31, 1967

CALIFORNIA LEGISLATURE—1967 REGULAR SESSION

ASSEMBLY BILL

No. 163

Introduced by Assemblymen Porter, Chappie, Ray E. Johnson, Belotti, Collier, Harvey Johnson, Lanterman, Monagan, Quimby, and Russell
Russell, Stull, Stacey, Moorhead, Mobley, and Hinckley
(Coauthor: Senator Cologne)

January 18, 1967

REFERRED TO COMMITTEE ON WATER

An act to amend the heading of Article 3 (commencing with Section 175) of Chapter 2, Division 1 of, Sections 175, 177, 179, 181, 182, 183, 186, 187, 229, 1003.5, 1051.5, 1060, 1241.6, 1243, 1485, 6056, 10500, 10504, 10504.1, 10504.5, 12232, 12233, 13000, 13000.2, 13001, 13003, 13005, of, the heading of Chapter 3 (commencing with Section 13010) of Division 7 of, the heading of Article 2 (commencing with Section 13020) of Chapter 3 of Division 7 of, Sections 13022.2, 13022.3, 13025.5, 13050, and 20627 of, to amend and renumber Sections 13020.1 and 13020.2 of, to add Sections 25, 174, 179.6, 179.7, ~~183.5~~, 1258, Article 1 (commencing with Section 13015) to Chapter 3 of Division 7 of, and Section 13025.7 to, and to repeal Article 1 (commencing with Sec-

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as amended, Porter (Water). Water Resources Control Board.

Amends, adds, and repeals various secs., Wat.C., and Ch. 1351, Stats. 1965.

Abolishes State Water Rights Board and the State Water Quality Control Board and establishes State Water Resources Control Board within the Resources Agency.

Vests in the board all state power and responsibility relative to the supervision of water appropriation pursuant to permit or license and water pollution and water quality.

To become operative on first day of month following the effective date of the act.

Vote—Majority ; Appropriation—No ; State Expense—Yes.

tion 13010) of Chapter 3 of Division 7 and Sections 13020, 13021, and 13026 of, the Water Code, and to amend Sections 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Water Pollution Control Law of 1965 (Chapter 1351 of the Statutes of 1965), relating to water resources.

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

1 SECTION 1. Section 25 is added to the Water Code, to
2 read:

3 25. "Board," unless otherwise specified, means the State
4 Water Resources Control Board.

5 SEC. 1.5. The heading of Article 3 (commencing with Sec-
6 tion 175) of Chapter 2, Division 1, of the Water Code is
7 amended to read:

8

9 Article 3. State Water Resources Control Board

10

11 SEC. 2. Section 174 is added to the Water Code imme-
12 diately preceding Section 175, to read:

13 174. The Legislature hereby finds and declares that in
14 order to provide for the orderly and efficient administration
15 of the water resources of the state it is necessary to establish
16 a control board which shall exercise the adjudicatory and reg-
17 ulatory functions of the state in the field of water resources.

18 It is also the intention of the Legislature to combine the
19 water rights and the water pollution and water quality func-
20 tions of state government to provide for consideration of
21 water pollution and water quality, and availability of unap-
22 propriated water whenever applications for appropriation of
23 water are granted or waste discharge requirements or water
24 quality objectives are established.

25 SEC. 2.4. Section 175 of the Water Code is amended to
26 read:

27 175. There is in the Resources Agency the State Water
28 Resources Control Board consisting of five members appointed
29 by the Governor. One of the members appointed shall be an
30 attorney admitted to practice law in this state who is qualified
31 in the fields of water supply and water rights, one shall be
32 a registered civil engineer under the laws of this state who is
33 qualified in the fields of water supply and water rights, one
34 shall be a registered civil engineer under the laws of this state
35 who is experienced in sanitary engineering and who is quali-
36 fied in the field of water quality, one shall be qualified in the
37 field of water quality, and one member shall not be required
38 to have specialized experience.

39 Each member shall represent the state at large and not any
40 particular portion thereof. The appointments so made by the
41 Governor shall be subject to confirmation by the Senate at the
42 next regular or special session of the Legislature, and the re-

1 SEC. 7.5. Section 1060 of the Water Code is amended to
2 read:

3 1060. (a) All fees collected and deposited in the State
4 Treasury by the State Water Resources Control Board, ex-
5 cept ~~fees funds~~ collected under Part 3 (commencing with Sec-
6 tion 2000) of this division, funds received for trial distribution
7 expenses in connection with the administration of Section
8 1051.5, *and* deposits and payments made pursuant to Section
9 5007, *and* payments made to the board ~~in connection with its~~
10 ~~watermaster service functions~~, shall be credited to the appro-
11 priation for the support of the board which is current at the
12 time of the deposit of such fees in the State Treasury.

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

20 SEC. 7.6. Section 1241.6 of the Water Code is amended
21 to read:

22 1241.6. When water appropriated for irrigation purposes
23 is not used by reason of compliance with crop control or soil
24 conservation contracts with the United States, and in other
25 cases of hardship as the board may by rule prescribe, the
26 three-year forfeiture period applicable to water appropriated
27 pursuant to the Water Commission Act or this code, and the
28 forfeiture period applicable to water appropriated prior to
29 December 19, 1914, shall be extended by an additional period
30 of not more than 10 years or the duration of any crop control
31 or soil conservation contracts with the United States if less
32 than 10 years.

33 SEC. 7.7. Section 1243 of the Water Code is amended to
34 read:

35 1243. The use of water for recreation and preservation
36 and enhancement of fish and wildlife resources is a beneficial
37 use of water. In determining the amount of water available
38 for appropriation for other beneficial uses, the board shall
39 take into account, whenever it is in the public interest, the
40 amounts of water required for recreation and the preservation
41 and enhancement of fish and wildlife resources.

42 This section shall not be construed to affect riparian rights.

43 SEC. 7.8. Section 1258 is added to the Water Code, to read:

44 1258. In acting upon applications to appropriate water,
45 the board shall consider water quality objectives which have
46 been established pursuant to law, and may subject such appro-
47 priations to such terms and conditions as it finds are necessary
48 to carry out such objectives.

49 SEC. 8. Section 1485 of the Water Code is amended to
50 read:

51 1485. Any municipality, governmental agency, or political
52 subdivision operating waste disposal plants producing disposal

1 water meeting the requirements of the appropriate regional
2 board, and disposing of said water in the San Joaquin River
3 may file an application for a permit to appropriate an equal
4 amount of water, less diminution by seepage, evaporation,
5 transpiration or other natural causes between the point
6 of discharge and the point of recovery, downstream from said
7 disposal plant and out of the San Joaquin River or the Sacra-
8 mento-San Joaquin Delta. A permit to appropriate such
9 amount of water may be granted by the board upon such terms
10 and conditions as in the board's judgment are necessary for
11 the protection of the rights of others. Water so appropriated
12 may be sold or utilized for any beneficial purpose. The right
13 to the use of water granted by this section shall not include
14 water flowing in underground streams.

15 The Legislature finds and declares that the problems inci-
16 dent to the full utilization of the waters of the San Joaquin
17 River and the Sacramento-San Joaquin Delta into which it
18 flows, are unique and that a general law cannot be made appli-
19 cable thereto.

20 SEC. 136. Section 6056 is added to the Water Code, to
21 read:

22 6056. The department shall retain a board of three con-
23 sultants who shall make an independent report to the director
24 upon the issuance, modification, or renewal of any certificate
25 of approval for any dam owned by the department.

26 SEC. 136.1. Section 10500 of the Water Code is amended
27 to read:

28 10500. The department shall make and file applications for
29 any water which in its judgment is or may be required in the
30 development and completion of the whole or any part of a
31 general or coordinated plan looking toward the development,
32 utilization, or conservation of the water resources of the state.

33 Any application filed pursuant to this part shall be made
34 and filed pursuant to Part 2 of Division 2 of this code and
35 the rules and regulations of the State Water Resources Control
36 Board relating to the appropriation of water insofar as appli-
37 cable thereto.

38 Applications filed pursuant to this part shall have priority,
39 as of the date of filing, over any application made and filed
40 subsequent thereto. Until October 1, 1967, or such later date
41 as may be prescribed by further legislative enactment, the
42 statutory requirements of said Part 2 (commencing with
43 Section 1200) of Division 2 relating to diligence shall not ap-
44 ply to applications filed under this part, except as otherwise
45 provided in Section 10504.

46 SEC. 136.2. Section 10504 of the Water Code is amended
47 to read:

48 10504. All applications made and filed pursuant to Section
49 10500 shall be transferred to the State Water Resources Con-
50 trol Board and held by the board for the purposes of this
51 part. The board may release from priority or assign any por-
52 tion of any application filed under this part when the release

1 State Water Resources Control Board shall give full consider-
2 ation to the views of the California Water Commission and
3 the recommendations of said commission shall be transmitted
4 to the Legislature as a part of said reports.

5 SEC. 163.5. It is the intent and purpose of the Legisla-
6 ture by this act to further the concept of the original Dickey
7 Water Pollution Act for regional water pollution control
8 which has proven, over the years, to be the best means of in-
9 volving all levels of government in accomplishing cooperative
10 and effective control of water pollution and water quality.

11 SEC. 164. This act shall become operative on the first day
12 of the month following the effective date of the act.

O

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN SENATE MAY 10, 1967
AMENDED IN SENATE APRIL 26, 1967
AMENDED IN ASSEMBLY MARCH 31, 1967

CALIFORNIA LEGISLATURE—1967 REGULAR SESSION

ASSEMBLY BILL

No. 163

Introduced by Assemblymen Porter, Chappie, Ray E. Johnson, Belotti, Collier, Harvey Johnson, Lanterman, Monagan, Quimby, Russell, Stull, Stacey, Moorhead, Mobley, and Hinckley
(Coauthor : Senator Cologne)

January 18, 1967

REFERRED TO COMMITTEE ON WATER

An act to amend the heading of Article 3 (commencing with Section 175) of Chapter 2, Division 1 of, Sections 175, 177, 179, 181, 182, 183, 186, 187, 229, 1003.5, 1051.5, 1060, 1241.6, 1243, 1485, 6056, 10500, 10504, 10504.1, 10504.5, 12232, 12233, 13000, 13000.2, 13001, 13003, 13005, of, the heading of Chapter 3 (commencing with Section 13010) of Division 7 of, the heading of Article 2 (commencing with Section 13020) of Chapter 3 of Division 7 of, Sections 13022.2, 13022.3, 13025.5, 13050, and 20627 of, to amend and renumber Sections 13020.1 and 13020.2 of, to add Sections 25, 174, 179.6, 179.7, 1258, 6056, Article 1 (commencing with Section 13015) to Chapter 3 of Division 7 of, and Section 13025.7 to, and to repeal Article 1 (commencing with Sec-

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as amended, Porter (Water). Water Resources Control Board.

Amends, adds, and repeals various secs., Wat.C., and Ch. 1351, Stats. 1965.

Abolishes State Water Rights Board and the State Water Quality Control Board and establishes State Water Resources Control Board within the Resources Agency.

Vests in the board all state power and responsibility relative to the supervision of water appropriation pursuant to permit or license and water pollution and water quality.

To become operative on first day of month following the effective date of the act.

Vote—Majority ; Appropriation—No ; State Expense—Yes.

tion 13010) of Chapter 3 of Division 7 and Sections 13020, 13021, and 13026 of, the Water Code, TO AMEND SECTION 10500 OF THE WATER CODE, AS AMENDED BY ASSEMBLY BILL NO. 1222 OF THE 1967 REGULAR SESSION, and to amend Sections 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Water Pollution Control Law of 1965 (Chapter 1351 of the Statutes of 1965), relating to water resources.

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

1 SECTION 1. Section 25 is added to the Water Code, to
2 read:

3 25. "Board," unless otherwise specified, means the State
4 Water Resources Control Board.

5 SEC. 1.5. The heading of Article 3 (commencing with Sec-
6 tion 175) of Chapter 2, Division 1, of the Water Code is
7 amended to read:

8

9 Article 3. State Water Resources Control Board

10

11 SEC. 2. Section 174 is added to the Water Code imme-
12 diately preceding Section 175, to read:

13 174. The Legislature hereby finds and declares that in
14 order to provide for the orderly and efficient administration
15 of the water resources of the state it is necessary to establish
16 a control board which shall exercise the adjudicatory and reg-
17 ulatory functions of the state in the field of water resources.

18 It is also the intention of the Legislature to combine the
19 water rights and the water pollution and water quality func-
20 tions of state government to provide for consideration of
21 water pollution and water quality, and availability of unap-
22 propriated water whenever applications for appropriation of
23 water are granted or waste discharge requirements or water
24 quality objectives are established.

25 SEC. 2.4. Section 175 of the Water Code is amended to
26 read:

27 175. There is in the Resources Agency the State Water
28 Resources Control Board consisting of five members appointed
29 by the Governor. One of the members appointed shall be an
30 attorney admitted to practice law in this state who is qualified
31 in the fields of water supply and water rights, one shall be
32 a registered civil engineer under the laws of this state who is
33 qualified in the fields of water supply and water rights, one
34 shall be a registered civil engineer under the laws of this state
35 who is experienced in sanitary engineering and who is quali-
36 fied in the field of water quality, one shall be qualified in the
37 field of water quality, and one member shall not be required
38 to have specialized experience.

39 Each member shall represent the state at large and not any
40 particular portion thereof. The appointments so made by the
41 Governor shall be subject to confirmation by the Senate at the

1 expenses in connection with the administration of Section
2 1051.5, and deposits and payments made pursuant to Section
3 5007, shall be credited to the appropriation for the support
4 of the board which is current at the time of the deposit of
5 such fees in the State Treasury.

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

13 SEC. 7.6. Section 1241.6 of the Water Code is amended
14 to read:

15 1241.6. When water appropriated for irrigation purposes
16 is not used by reason of compliance with crop control or soil
17 conservation contracts with the United States, and in other
18 cases of hardship as the board may by rule prescribe, the
19 three-year forfeiture period applicable to water appropriated
20 pursuant to the Water Commission Act or this code, and the
21 forfeiture period applicable to water appropriated prior to
22 December 19, 1914, shall be extended by an additional period
23 of not more than 10 years or the duration of any crop control
24 or soil conservation contracts with the United States if less
25 than 10 years.

26 SEC. 7.7. Section 1243 of the Water Code is amended to
27 read:

28 1243. The use of water for recreation and preservation
29 and enhancement of fish and wildlife resources is a beneficial
30 use of water. In determining the amount of water available
31 for appropriation for other beneficial uses, the board shall
32 take into account, whenever it is in the public interest, the
33 amounts of water required for recreation and the preservation
34 and enhancement of fish and wildlife resources.

35 This section shall not be construed to affect riparian rights.

36 SEC. 7.8. Section 1258 is added to the Water Code, to read:

37 1258. In acting upon applications to appropriate water,
38 the board shall consider water quality objectives which have
39 been established pursuant to law, and may subject such appro-
40 priations to such terms and conditions as it finds are necessary
41 to carry out such objectives.

42 SEC. 8. Section 1485 of the Water Code is amended to
43 read:

44 1485. Any municipality, governmental agency, or political
45 subdivision operating waste disposal plants producing disposal
46 water meeting the requirements of the appropriate regional
47 board, and disposing of said water in the San Joaquin River
48 may file an application for a permit to appropriate an equal
49 amount of water, less diminution by seepage, evaporation,
50 transpiration or other natural causes between the point
51 of discharge and the point of recovery, downstream from said

1 disposal plant and out of the San Joaquin River or the Sacra-
2 mento-San Joaquin Delta. A permit to appropriate such
3 amount of water may be granted by the board upon such terms
4 and conditions as in the board's judgment are necessary for
5 the protection of the rights of others. Water so appropriated
6 may be sold or utilized for any beneficial purpose. The right
7 to the use of water granted by this section shall not include
8 water flowing in underground streams.

9 The Legislature finds and declares that the problems inci-
10 dent to the full utilization of the waters of the San Joaquin
11 River and the Sacramento-San Joaquin Delta into which it
12 flows, are unique and that a general law cannot be made appli-
13 cable thereto.

14 SEC. 136. Section 6056 is added to the Water Code, to
15 read:

16 6056. The department shall retain a board of three con-
17 sultants who shall make an independent report to the director
18 upon the issuance, modification, or renewal of any certificate
19 of approval for any dam owned by the department.

20 ~~SEC. 136.1~~

21 SEC. 136.05. Section 10500 of the Water Code is amended
22 to read:

23 10500. The department shall make and file applications for
24 any water which in its judgment is or may be required in the
25 development and completion of the whole or any part of a
26 general or coordinated plan looking toward the development,
27 utilization, or conservation of the water resources of the state.

28 Any application filed pursuant to this part shall be made
29 and filed pursuant to Part 2 (*commencing with Section 1200*)
30 of Division 2 of this code and the rules and regulations of the
31 State Water Resources Control Board relating to the appro-
32 priation of water insofar as applicable thereto.

33 Applications filed pursuant to this part shall have priority,
34 as of the date of filing, over any application made and filed
35 subsequent thereto. Until October 1, 1967, or such later date
36 as may be prescribed by further legislative enactment, the
37 statutory requirements of said Part 2 (*commencing with*
38 *Section 1200*) of Division 2 relating to diligence shall not ap-
39 ply to applications filed under this part, except as otherwise
40 provided in Section 10504.

41 SEC. 136.1. *Section 10500 of the Water Code, as amended*
42 *by Assembly Bill No. 1222 of the 1967 Regular Session, is*
43 *amended to read:*

44 10500. The department shall make and file applications for
45 any water which in its judgment is or may be required in the
46 development and completion of the whole or any part of a
47 general or coordinated plan looking toward the development,
48 utilization, or conservation of the water resources of the state.

49 Any application filed pursuant to this part shall be made
50 and filed pursuant to Part 2 (*commencing with Section 1200*)
51 of Division 2 of this code and the rules and regulations of the

1 (d) Recommendations as to the equitable apportionment
2 of cost of development, construction and operation among the
3 various beneficiaries of the plan.

4 (e) Recommendations as to the schedule for staged devel-
5 opment of the various phases of the comprehensive plan.

6 (f) Delineation of the major subject areas, with estimates
7 of cost, for additional studies which are considered essential
8 to the further development of a regional, comprehensive water
9 pollution control plan in the San Francisco Bay-delta area.

10 SEC. 163. Section 11 of the Water Pollution Control Law
11 of 1965 is amended to read:

12 Sec. 11. Before completion of the reports required by
13 Sections 8 and 9 of this act, the State Water Resources
14 Control Board and the California Water Commission shall
15 jointly hold at least three public hearings in both the areas of
16 the receiving waters and the sources of drainage discharge. In
17 formulating its final recommendations for these reports, the
18 State Water Resources Control Board shall give full consider-
19 ation to the views of the California Water Commission and
20 the recommendations of said commission shall be transmitted
21 to the Legislature as a part of said reports.

22 SEC. 163.5. It is the intent and purpose of the Legisla-
23 ture by this act to further the concept of the original Dickey
24 Water Pollution Act for regional water pollution control
25 which has proven, over the years, to be the best means of in-
26 volving all levels of government in accomplishing cooperative
27 and effective control of water pollution and water quality.

28 SEC. 164. *Section 136.1 of this act shall become operative*
29 *only if Assembly Bill No. 1222 is enacted into law by the*
30 *Legislature at its 1967 Regular Session, and in such case Sec-*
31 *tion 10500 of the Water Code as amended by Section 136.05 of*
32 *this act is repealed. This act shall become operative on the first*
33 *day of the month following the effective date of the act.*

MEMBERS

JOHN STULL
VICE CHAIRMAN
ROBERT E. BADHAM
EUGENE A. CHAPPIE
PAULINE L. DAVIS
STEWART HINCKLEY
HARVEY JOHNSON
RAY E. JOHNSON
CHARLES W. MEYERS
ERNEST N. MOBLEY
ROBERT MONAGAN
CARLOS J. MOORHEAD
JOHN P. QUIMBY
NEWTON R. RUSSELL
KENT H. STACEY

RONALD B. ROSE
COMMITTEE CONSULTANT
JACI K. DEFORD
COMMITTEE SECRETARY
JOHN J. WAELTI
LEGISLATIVE INTERN
ROOM 2148
ASSEMBLY BOX 28
STATE CAPITOL
SACRAMENTO 95814
PHONE: (916) 445-6047

California Legislature

RECEIVED
GOVERNOR'S OFFICE

Assembly Committee

on

Water

CARLEY V. PORTER

CHAIRMAN

MAY 26

May 25, 1967

24 HR. ACK. NECESSARY

Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California 95814

Re: Assembly Bill 163

My dear Governor:

My Assembly Bill 163 has now passed both Houses of the Legislature unanimously and will soon be upon your desk for signature.

I am pleased that this legislation has been incorporated in your legislative program as part of your waste management package.

This bill is one of the major recommendations of the Assembly Interim Committee on Water and will combine the full-time 3-member State Water Rights Board and the 14-member part-time State Water Quality Control Board into a single new State Water Resources Control Board.

The new Board will be charged with all existing responsibilities of both of the existing boards and in addition will have the legal obligation to recognize the relationship between water quality and water quantity.

I believe that this legislation, which has been developed by the Committee over a period of more than a year, is one of the most important pieces of water legislation enacted in recent years. It is the first major reorganization of water agencies in state government since the creation of the Department of Water Resources in 1956.

I know that you are familiar with the legislation but I am enclosing a brief policy statement on the bill which presents its objectives in some detail. I am also enclosing a list of those supporting the bill, including every major water group in California.

ORGANIZATIONS SUPPORTING ASSEMBLY BILL 163

"State Water Resources Control Board"

Governor Ronald Reagan

Resources Agency

State Water Rights Board

Department of Water Resources

California Farm Bureau Federation

California State Chamber of Commerce

California Manufacturers Association

California Municipal Utilities Association

County Supervisors Association of California

League of California Cities

Irrigation Districts Association

Northern California County Water Resources Association

Mountain Counties Water Resources Association

Contra Costa County Water Agency

Metropolitan Water District of Southern California

Eel River Association

"Little Hoover Commission"

Northern California County Supervisors Association

Canners League of California

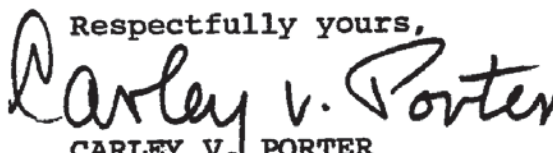
ASSEMBLY COMMITTEE ON WATER
CARLEY V. PORTER, CHAIRMAN

Honorable Ronald Reagan

-2-

May 25, 1967

There is no opposition to this bill. I respectfully request that you sign AB 163 into law.

Respectfully yours,

CARLEY V. PORTER
Chairman

Enclosure

CALIFORNIA MANUFACTURERS ASSOCIATION

606 SOUTH HILL STREET
LOS ANGELES, CALIFORNIA 90014

RECEIVED
GOVERNOR'S OFFICE

1967 MAY 31 AM 9 12

May 29, 1967

T. F. KNIGHT, JR.
EXECUTIVE VICE PRESIDENT

Honorable Ronald Reagan, Governor
State of California
State Capitol Building
Sacramento, California 95814

Dear Governor Reagan:

We strongly urge you to sign into law Assembly Bill (A.B.) 163. This measure by Assemblyman Carley Porter has been strongly supported by the California Manufacturers Association.

We feel that this measure (A.B. 163) is a sound step forward in water quality control.

Respectfully yours,


T. F. Knight, Jr.

TFK/p

Memorandum

To : Honorable Ronald Reagan, Governor
 State of California
 State Capitol
 Sacramento, California
 Attention: Vernon L. Sturgeon and
 Jack B. Lindsey

Date : MAY 29 1967
 File No.:
 Subject: Recommendation
 on A.B. 163

From : Director of Water Resources
 Bill No.: A.B. 163
 Author: Porter, et al. (Senator Cologne, Coauthor)

Summary:

A.B. 163 combines the functions of the State Water Rights Board and the State Water Quality Control Board into a new State Water Resources Control Board.

Analysis:

The chief justification for the bill is that it combines in one agency jurisdiction over both water quantity and water quality. This Department has long held the view that considerations of water quantity cannot be separated from those of water quality.

History and Sponsor:

The bill was sponsored by the Assembly Interim Committee on Water. Hearings on the proposal were held by the Committee in San Francisco on November 17, 1966. As originally introduced, the bill proposed to transfer to the new Board certain functions of this Department, including supervision over the safety of dams and watermaster service. The Department objected to the transfer of these functions, and the transfer has been deleted from the bill.

Recommendation:

I recommend that A.B. 163 be approved.

W. L. Lindsey
 Director

Date 5/29/67

 Special Representative

Date _____

[Signature]
 Administrator ASSISTANT TO THE ADMINISTRATOR

Date FBI MAY 29 1967

APPROVED

AB 163

WATER RESOURCES CONTROL BOARD

Assembly Bill 163 would merge the State Water Rights Board and the State Water Quality Control Board into a single new State Water Resources Control Board.

This bill is an interim committee study recommendation and is the result of nearly two years work by committee members and staff. As you can see from the list which you have been provided, it now has the support of every major water organization in California.

There are three basic objectives of the Water Resources Control Board:

First, and most fundamentally, the Board will combine the functions of water quality and water quantity (as expressed through water rights) under the jurisdiction of a single board. Thus, no longer will a water right be granted without any consideration of its water quality implications. In addition, water quality control policy will be established with full consideration of water quantity (water rights) aspects.

Secondly, it has become obvious to nearly everyone that the part-time (one or two day a month) State Water Quality Control Board is not adequate to meet the State's needs in the water quality control field. The Board has failed to exert leadership because its organization will not permit it. In

addition to objections to its part-time nature, the Board is composed of nine public members and five directors of state departments. The conflicts between these two groups and the conflict of interest inherent in having state directors serving on the Board as well as heading departments has resulted in chaos, stalemate and bickering on the State Board to the detriment of the entire State Water Quality Control Program.

Third, it is desirable that most of the state's water quality functions be concentrated in a single water quality organization -- the State Board and the nine Regional Boards. All of the other legislation which the Committee has recommended this year is directed toward making water quality functions the responsibility of the State and Regional Boards. This bill is the major step in that direction.

Finally, from a policy standpoint, as you all know, the Regional Water Quality Control Boards have the primary responsibility for establishing waste discharge requirements on individual dischargers. Their actions, of course, are appealable to the State Board. However, our Regional Water Quality Control Boards are our first line of defense in the fight against water pollution. They will continue to be.

Every effort has been made to insure that the relationship between the State and Regional Boards remains as it has since the original Dickey Act of 1949. In order to emphasize this intent of the Legislature, a policy section has been added to AB 163 affirming this position.

This bill is fully compatible with, and, in fact, is a part of the Governor's overall waste management program.

Details on the New Board

The State Water Rights Board now consists of three members appointed by the Governor (an attorney, an engineer and a public member) and the State Water Quality Control Board consists of nine public members appointed by the Governor and 5 Directors of state departments (Agriculture, Water Resources, Fish and Game, Conservation, and Public Health). The new Water Resources Control Board would consist of 5 members including an attorney and an engineer with experience in water supply and water rights; a sanitary engineer and another person qualified in the field of water quality; and a public member.

To advise the Board on its water quality functions, a Water Quality Advisory Committee is created consisting of the existing nine public members of the State Water Quality Control Board and the Chairmen of the nine Regional Water Quality Control Boards.

To: **Honorable Ronald Reagan**
~~XXXXXXXXXXXXXXXXXXXX~~
Governor of California

Bill Report

From: **Office of the Attorney General**

A. B. No. 163 (Porter)

By **Bertram G. Buzzini**
Deputy Attorney General

June 2 , 1967 .

We have examined the above bill and find no substantial
legal objection thereto.

Bertram G. Buzzini
BERTRAM G. BUZZINI
Deputy Attorney General

Memorandum

To : Honorable Ronald Reagan
Governor of California

Date : June 5, 1967

File No.:

Attention: Mr. Vernon L. Sturgeon
and Mr. Jack Lindsey
Legislative Secretaries

From : Department of Finance --Office of the Director

Subject: AB 163 (Porter and Others)

SUMMARY:

This bill establishes the State Water Resources Control Board through the consolidation of the State Water Rights Board and the State Water Quality Control Board. The newly-created 5-member board will consist of the present 3-member State Water Rights Board plus 2 additional members. The present State Water Quality Control Board would, with some changes, be retained as the Water Quality Advisory Committee.

HISTORY AND SPONSOR:

Originally, this bill included in its consolidation aspects the dam safety functions and watermaster services of the Department of Water Resources. Unfortunately, these functions were removed from the effects of this bill by an earlier amendment. The present bill still has merit however. The primary objective of such a reorganization is to provide for a more efficient and comprehensive administration of these important functions related to water rights and water quality, which are now in the hands of two separate boards. Hopefully such a consolidation will provide economies, as well as increased efficiency, although such economies cannot be identified at this time.

FINANCIAL EFFECT AND COMMENT:

This bill itself does not appropriate any money to effect this reorganization. The addition of two new board members, however, will cost \$41,000. Assembly Subcommittee 1(A) has added Item 218.5, in the amount of \$41,000, to the Budget Bill to implement establishment of this new board. This new budget item was adopted by the Full Committee on Ways and Means on June 1, 1967. At the present time the Senate has no such item.

RECOMMENDATION:

Sign the bill.



Gordon P. Smith
Director of Finance

GPS:edd

BILL MEMORANDUM

Date: June 5, 1967

TO : GOVERNOR REAGAN

FROM: VERNON L. STURGEON
Legislative Secretary, Senate

JACK B. LINDSEY
Legislative Secretary, Assembly

Assembly BILL No. 163 By Porter

VOTE: Senate Unanimous

Assembly Unanimous

Assembly Bill No. 163 abolishes the State Water Rights Board and the State Water Quality Control Board and establishes State Water Resources Control Board within the Resources Agency.

The bill vests in the newly created Board all state power and responsibility relative to the supervision of water appropriation pursuant to permit or license and water pollution and water quality.

The bill is a part of the Governor's legislative program on waste management.

The Attorney General and Legislative Counsel have no constitutional or legal objections to approval.

The Resources Agency recommends approval.

The California Manufacturers Association strongly supports the bill.

Assemblyman Porter, the author, requests approval.

RECOMMENDATION: Approve

JBL
6-7

rw/jj

ASSEMBLY COMMITTEE ON WATER
CARLEY V. PORTER, CHAIRMAN

WILLIAMS
PRESS RELEASE
Room 2148, State Capitol
445-6047

RECEIVED
GOVERNOR'S OFFICE
June 5, 1967

FOR RELEASE THURSDAY JUNE 8, 1967

1967 JUN 6 PM 2 11

GOVERNOR SIGNS PORTER WATER QUALITY LEGISLATION

Assemblyman Carley V. Porter, 38th District, Chairman of the Assembly Water Committee, today announced that Governor Reagan has signed into law AB 163, legislation creating a new State Water Resources Control Board.

"This legislation", Porter said, "is the first major reorganization of state agencies in the water resources field since the creation of the Department of Water Resources in 1956". The bill combines the 3-member full-time State Water Rights Board and the 14-member part-time State Water Quality Control Board into a new Board which will exercise all powers of the two existing Boards.

"Under the bill, for the first time the State will have coordinate administration of water quality and water quantity," Porter said. "The new Board should also serve to revitalize our water quality control efforts on the state level". Porter said that "the legislation in no way alters, and, in fact, enhances the status of the State's nine Regional Water Quality Control Boards, which will continue to be the State's first line of defense against water pollution."

-MORE-

June 5, 1967
Page 2

The legislation is the result of more than 2 year's work by the Assembly Water Committee and had the support of every major water group in the State. The bill was adopted by Governor Reagan as part of his comprehensive waste management control program and is the first part of this program to be signed into law.

Porter said "I believe that this legislation is one of the most significant pieces of water legislation since the enactment in 1957 of the Burns-Porter Act which provided the \$1.75 billion bond issue to finance the State's Feather River Project."

#

BERNARD CZESLA
CHIEF DEPUTY

TERRY L. BAUM
J. GOULD
OWEN K. KUNS
RAY H. WHITAKER
KENT L. DECHAMBEAU
STANLEY M. LOURIMORE
EDWARD K. PURCELL
PRINCIPAL DEPUTIES

EDWARD F. NOWAK
DEPUTY IN CHARGE
LOS ANGELES OFFICE

3021 STATE CAPITOL
SACRAMENTO 95814

110 STATE BUILDING
LOS ANGELES 90012

Legislative Counsel of California

GEORGE H. MURPHY

GERALD ROSS ADAMS
CARL M. ARNOLD
EVERETT AVILA
JERRY L. BASSETT
EDWARD BERSHATSKY
LAURENCE C. BLUNT
ROBERT A. BRAVERMAN
JOHN CORZINE
CLINTON J. DEWITT
JEROME DIAMOND
CARL A. ERIKSON, III
HARVEY J. FOSTER
THOMAS H. FRANKEL
ROBERT D. GRONKE
C. ROBERT JAMESON
JAMES E. KASSIS
L. DOUGLAS KINNEY
ERNEST H. KUNZI
SHERWIN C. MACKENZIE, JR.
ANN M. MACKAY
STEPHEN L. MILLICH
LARRY B. NORD
ROSE OLIVER
TRACY O. POWELL, II
MARGUERITE R. ROTH
CAREY W. ROYSTER
MARY SHAW
RUSSELL L. SPARLING
BRIAN L. WALKUP
DAVID M. WEETMAN
THOMAS D. WHELAN
DEPUTIES

June 6, 1967

Honorable Ronald Reagan
Governor of California
state Capitol
Sacramento, California

REPORT ON ENROLLED BILL

A. B. 163 PORTER. Amends, adds, and repeals various secs., Wat. C., and Ch. 1351, Stats. 1965, re Water Resources Control Board.

SUMMARY: See Legislative Counsel's Digest on attached copy of bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

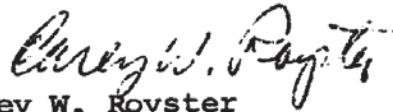
CONFLICTS: This bill and A.B. 718 (Ch. 70, Stats. 1967), already signed into law by the Governor, both amend Section 13005 of the Water Code. A.B. 718, as legislation necessary to maintain the Water Code, made no substantive change in the section. This bill changes the name of the "State Water Quality Control Board" to the "State Water Resources Control Board" and specifies that the definitions contained in Section 13005 are "as used in this division." This bill preserves the nonsubstantive change made by A.B. 718 and could thus be signed by the Governor without affecting it.

This bill and A.B. 718 both repeal Section 13026 of the Water Code, an obsolete

Report on A. B. 163 - p. 2

provision relating to a report on the effect of synthetic detergents on waters of the state required to be reported to the Legislature in 1965. Since both bills repeal the section, the Governor may sign this bill without substantively affecting the repeal made by A.B. 718.

George H. Murphy
Legislative Counsel

By 
Carey W. Royster
Deputy Legislative Counsel

CWR:TG

Two copies to Honorable William T. Bagley,
pursuant to Joint Rule 34.

STATUTES OF CALIFORNIA

REGULAR SESSION

1967

Began Monday, January 2, 1967, and
Adjourned Friday, September 8, 1967

subsequent thereto. Until the 61st day after adjournment of the 1971 Regular Session, or such later date as may be prescribed by further legislative enactment, the statutory requirements of said 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.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The authority of the Department of Water Resources to file applications for the appropriation of water needed for the development and completion of various plans for the development, utilization, or conservation of the water resources of this state and in so doing to be exempt from the diligence provisions generally applicable to appropriations of water, is vital to the preservation of the public peace, health, and safety. This act must go into immediate effect in order to insure the continuance of this provision after October 1, 1967, at which date it will otherwise terminate.

CHAPTER 284

An act to amend the heading of Article 3 (commencing with Section 175) of Chapter 2, Division 1 of, Sections 175, 177, 179, 181, 182, 183, 186, 187, 229, 1003.5, 1051.5, 1060, 1241.6, 1243, 1485, 10500, 10504, 10504.1, 10504.5, 12232, 12233, 13000, 13000.2, 13001, 13003, 13005, of, the heading of Chapter 3 (commencing with Section 13010) of Division 7 of, the heading of Article 2 (commencing with Section 13020) of Chapter 3 of Division 7 of, Sections 13022.2, 13022.3, 13025.5, 13050, and 20627 of, to amend and renumber Sections 13020.1 and 13020.2 of, to add Sections 25, 174, 179.6, 179.7, 1258, 6056, Article 1 (commencing with Section 13015) to Chapter 3 of Division 7 of, and Section 13025.7 to, and to repeal Article 1 (commencing with Section 13010) of Chapter 3 of Division 7 and Sections 13020, 13021, and 13026 of, the Water Code, to amend Section 10500 of the Water Code, as amended by Assembly Bill No. 1222 of the 1967 Regular Session, and to amend Sections 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Water Pollution Control Law of 1965 (Chapter 1351 of the Statutes of 1965), relating to water resources.

[Approved by Governor June 7, 1967. Filed with Secretary of State June 7, 1967.]

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

SECTION 1. Section 25 is added to the Water Code, to read:

25. "Board," unless otherwise specified, means the State Water Resources Control Board.

SEC. 1.5. The heading of Article 3 (commencing with Section 175) of Chapter 2, Division 1, of the Water Code is amended to read:

Article 3. State Water Resources Control Board

SEC. 2. Section 174 is added to the Water Code immediately preceding Section 175, to read:

174. 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 which shall exercise the adjudicatory and regulatory functions of the state in the field of water resources.

It is also the intention of the Legislature to combine the water rights and the water pollution and water quality functions of state government to provide for consideration of water pollution and water quality, and availability of unappropriated water whenever applications for appropriation of water are granted or waste discharge requirements or water quality objectives are established.

SEC. 2.4. Section 175 of the Water Code is amended to read:

175. There is in the Resources 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 civil engineer under the laws of this state who is experienced in sanitary engineering and who is qualified in the field of water quality, one shall be qualified in the field of water quality, and one member shall not be required to have specialized experience.

Each member shall represent the state at large and not any particular portion thereof. The appointments so made by the Governor shall be subject to confirmation by the Senate at the next regular or special session of the Legislature, and the refusal or failure of the Senate to confirm an appointment shall create a vacancy in the office to which the appointment was made.

SEC. 3. Section 177 of the Water Code is amended to read:

177. The members of the State Water Rights Board in office on the operative date of the 1967 act amending this section shall continue as members of the State Water Resources Control Board, and their terms shall expire as follows: one member on January 15, 1969, one member on January 15, 1970, and one member on January 15, 1971. The terms of the two additional members of the board provided for by the 1967 act

amending Section 175 first appointed by the Governor shall expire as follows: one member on January 15, 1972, and one member on January 15, 1969. Thereafter 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.

SEC. 4. Section 179 of the Water Code is amended to read:

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.

SEC. 4.3. Section 179.6 is added to the Water Code, to read:

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.

SEC. 4.4. Section 179.7 is added to the Water Code, to read:

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.

SEC. 5. Section 181 of the Water Code is amended to read:

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. All meetings of the board shall be open and public. Three members of the board shall constitute a quorum for the purpose of transacting any business of the board.

SEC. 5.1. Section 182 of the Water Code is amended to read:

182. The Governor shall designate the chairman of the board from the membership of the board. The person so designated shall hold the office of chairman at the pleasure of the Governor. The board shall elect a vice chairman.

SEC. 5.2. Section 183 of the Water Code is amended to read:

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, except pursuant to Division 7 of this code, 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 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.

SEC. 6. Section 186 of the Water Code is amended to read:

186. The board shall have such powers, and may employ such legal counsel and other personnel and assistance, as may be necessary or convenient for the exercise of its duties under Division 2 (commencing with Section 1000), except Part 4 (commencing with Section 4000) and Part 6 (commencing with Section 5900) thereof, Part 2 (commencing with Section 10500) of Division 6, and Division 7 (commencing with Section 13000) of this code.

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 Control. The board shall appoint a chief of each division, who shall supervise the work thereof and act as technical adviser to the board on functions under his jurisdiction.

The Attorney General shall represent the board and the state in litigation concerning affairs of the board unless another state agency, represented by the Attorney General, is a party to the action. In such case the legal counsel of the board shall represent the board. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the State Water Resources Control Board. The legal counsel of the board shall advise and furnish legal services except representation in litigation, to the regional boards upon their request.

SEC. 6.1. Section 187 of the Water Code is amended to read:

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.

SEC. 6.2. Section 229 of the Water Code is amended to read:

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 and shall report thereon to the Legislature, to the board, and to the appropriate regional water quality control board annually, and 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.

SEC. 7. Section 1003.5 of the Water Code is amended to read:

1003.5. As used in this division, "board" means the State Water Resources Control Board.

SEC. 7.4. Section 1051.5 of the Water Code is amended to read:

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.

SEC. 7.5. Section 1060 of the Water Code is amended to read:

1060. (a) All fees collected and deposited in the State Treasury by the State Water Resources Control Board, 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.

SEC. 7.6. Section 1241.6 of the Water Code is amended to read:

1241.6. When 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 three-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.

SEC. 7.7. Section 1243 of the Water Code is amended to read:

1243. 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, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.

This section shall not be construed to affect riparian rights.

SEC. 7.8. Section 1258 is added to the Water Code, to read:

1258. In acting upon applications to appropriate water, the board shall consider water quality objectives which have been established pursuant to law, and may subject such appropriations to such terms and conditions as it finds are necessary to carry out such objectives.

SEC. 8. Section 1485 of the Water Code is amended to read:

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 Joaquin Delta into which it flows, are unique and that a general law cannot be made applicable thereto.

SEC. 136. Section 6056 is added to the Water Code, to read:

6056. The department shall retain a board of three consultants who shall make an independent report to the director upon the issuance, modification, or renewal of any certificate of approval for any dam owned by the department.

SEC. 136.05. Section 10500 of the Water Code is amended to read:

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. Until October 1, 1967, or such later date as may be prescribed by further legislative enactment, the statutory requirements of said Part 2 (commencing with Section 1200) of Division 2 relating to diligence shall not apply to applications filed under this part, except as otherwise provided in Section 10504.

SEC. 136.1. Section 10500 of the Water Code, as amended by Assembly Bill No. 1222 of the 1967 Regular Session, is amended to read:

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. Until the 61st day after adjournment of the 1971 Regular Session, or such later date as may be prescribed by further legislative enactment, the statutory requirements of said 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.

SEC. 136.2. Section 10504 of the Water Code is amended to read:

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.

SEC. 136.3. Section 10504.1 of the Water Code is amended to read:

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.

SEC. 136.4. Section 10504.5 of the Water Code is amended to read:

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.

SEC. 136.5. Section 12232 of the Water Code is amended to read:

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.

SEC. 136.6. Section 12233 of the Water Code is amended to read:

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.

SEC. 136.7. Section 13000 of the Water Code is amended to read:

13000. The Legislature finds and declares that it is necessary to the health, safety and welfare of the people of this state to provide means for coordinating the actions of the various state agencies and political subdivisions of the state in the control of water pollution and the maintenance of water quality.

The Legislature further declares that it is necessary to provide means for the regional control of water pollution since problems of water pollution in this state are primarily regional and dependent upon factors of precipitation, topography, population, and recreational, agricultural and industrial development which vary greatly from region to region.

The Legislature further declares that, because of the widespread demand and need for the full utilization of the water resources of the state for beneficial uses, control of water quality is a matter of statewide interest and concern. The Legislature further declares that it is necessary to provide for the coordinated statewide control of water quality and water rights and to provide for regional control of water quality where water quality is primarily a matter of regional concern.

SEC. 136.8. Section 13000 2 of the Water Code is amended to read:

13000.2. The Legislature finds and declares that, because of the widespread demand and need for the full utilization of the water resources of the state for beneficial uses, it is the policy of the state that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the state shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the state and shall be controlled so as to promote the peace, health, safety and welfare of the people of the state.

SEC. 137. Section 13001 of the Water Code is amended to read:

13001. No provision of this division or any ruling of the State Water Resources Control Board or a regional water quality control board is a limitation:

(a) On the power of a city or county to adopt and enforce additional regulations not in conflict therewith imposing further conditions, restrictions, or limitations with respect to the disposal of sewage or industrial waste or any other activity which might result in the pollution of water.

(b) On the power of any city or county to declare, prohibit, and abate nuisances.

(c) On the power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in the Civil Code or for relief against any contamination or pollution.

SEC. 138. Section 13003 of the Water Code is amended to read:

13003. It is the intent of the Legislature that the State Water Resources Control Board and each regional water quality control board shall be the principal state agencies with primary responsibility for the coordination and control of water pollution and water quality control.

SEC. 139. Section 13005 of the Water Code is amended to read:

13005. As used in this division: "State board" means the State Water Resources Control Board.

"Regional board" means any regional water quality control board created pursuant to this division.

"Person" as used in this division also includes any city, county, district, the state or any department or agency thereof.

"Sewage" means any and all waste substance, liquid or solid, associated with human habitation, or which contains or may be contaminated with human or animal excreta or excrement, offal, or any feculent matter.

"Industrial waste" means any and all liquid or solid waste substance, not sewage, from any producing, manufacturing or processing operation of whatever nature.

"Waters of the state" means any waters, surface or underground, including saline waters, within the boundaries of the state as defined and described in Section 1 of Article XXI of the Constitution and as given greater precision in Sections 170, 171, and 172 of the Government Code.

"Contamination" means an impairment of the quality of the waters of the state by sewage or industrial waste to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease. "Contamination" shall include any equivalent effect resulting from the disposal of sewage or industrial waste, whether or not waters of the state are affected.

"Pollution" means an impairment of the quality of the waters of the state by sewage or industrial waste to a degree which does not create an actual hazard to the public health

but which does adversely and unreasonably affect such waters for domestic, industrial, agricultural, navigational, recreational or other beneficial use, or which does adversely and unreasonably affect the ocean waters and bays of the state devoted to public recreation.

“Nuisance” means damage to any community by odors or unsightliness resulting from unreasonable practices in the disposal of sewage or industrial wastes.

“District attorney,” as used in this division, means “county counsel” with respect to any county having such an officer and “city attorney” with respect to any city and county having such an officer as to all matters except the prosecution of crimes.

“Water quality control” means the control of any factor which adversely and unreasonably impairs the quality of the waters of the state for beneficial use.

“Water quality control policy” means water quality objectives for affected waters of the state where water quality control measures are necessary or may be needed in the future to assure suitable water quality for beneficial use.

SEC. 140. The heading of Chapter 3 (commencing with Section 13010) of Division 7 of the Water Code is amended to read:

CHAPTER 3. STATE WATER QUALITY CONTROL

SEC. 141. Article 1 (commencing with Section 13010) of Chapter 3 of Division 7 of the Water Code is repealed.

SEC. 142. Article 1 (commencing with Section 13015) is added to Chapter 3 of Division 7 of the Water Code, to read:

Article 1. Water Quality Advisory Committee

13015. There is in the State Water Resources Control Board a Water Quality Advisory Committee consisting of nine members appointed by the Governor and the chairman of each of the nine regional water quality control boards or his designee. Of the nine members selected by the Governor at least one shall be selected from qualified persons engaged in each of the following fields:

(a) Production and distribution of municipal water supplies.

(b) Irrigation water supply.

(c) Industrial water supply

(d) Production of industrial waste

(e) Public sewage disposal

(f) City government.

(g) County government

(h) Recreation and wildlife. The person engaged in this field shall be a person from a responsible organization associated with recreation or wildlife, not employed by any governmental agency.

(i) One member not specifically associated with any of the foregoing interests representing the public at large.

Insofar as practical, the Governor shall appoint members in such manner as to afford representation on the committee of all parts of the state.

Each member of the former State Water Quality Control Board shall serve as an original member of the advisory committee. Each of the original members shall serve for the term for which he was appointed to the state board. Thereafter, all members appointed to the advisory committee shall serve for a term of four years.

13016. The Water Quality Advisory Committee shall meet at least once each quarter. The advisory committee may meet jointly with the state board. All meetings of the committee shall be open and public.

13017. The committee shall annually elect one of its members chairman. Ten of the members of the committee shall constitute a quorum for the purpose of transacting any business of the committee.

13018. The members of the committee directly appointed by the Governor to the committee shall serve without compensation but shall be reimbursed for all necessary expenses actually incurred in the performance of their duties.

13019. The state board shall consult with and seek the advice of the committee with regard to its responsibilities relating to water quality and water pollution control and prior to adopting water pollution or water quality control policy pursuant to this division. The committee members shall advise the board on such matters. The advisory committee may express its advice by resolution when appropriate.

SEC. 143. The heading of Article 2 (commencing with Section 13020) of Chapter 3 of Division 7 of the Water Code is amended to read:

Article 2. General Powers and Duties of the State Board

SEC. 144. Section 13020 of the Water Code is repealed.

SEC. 144.5. Section 13020.1 of the Water Code is amended and renumbered to read:

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

SEC. 145. Section 13020.2 of the Water Code is amended and renumbered to read:

13020. 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 13290) 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 de-

partments generally, the state board shall prepare an annual budget concerning its activities and the activities of the regional boards.

SEC. 146. Section 13021 of the Water Code is repealed.

SEC. 146.1. Section 13022.2 of the Water Code is amended to read:

13022.2. In formulating a statewide policy pursuant to Sections 13022 and 13022.1 the state board shall take cognizance of the California Water Plan or any other general or coordinated plan of the state looking toward the development, utilization, or conservation of the water resources of the state, including such amendments, supplements, or additions thereto as may be made from time to time.

SEC. 146.2. Section 13022.3 of the Water Code is amended to read:

13022.3. During the process of formulating water pollution or water quality control policy which may affect a regional board or boards, the state board shall consult with and carefully evaluate the recommendations of the affected regional board or boards and shall seek the advice of the Water Quality Advisory Committee.

SEC. 146.3. Section 13025.5 of the Water Code is amended to read:

13025.5. In the event a waste discharge in one region affects the waters in another region and there is any disagreement between the regional boards involved as to the requirements which should be established, either regional board may submit the disagreement to the state board which shall determine the applicable requirements. The power conferred upon the state board herein does not limit the powers conferred in Section 13025.

SEC. 146.4. Section 13025.7 is added to the Water Code, to read:

13025.7. The state board shall have the power to require any state or local agency to inspect and report on any technical factors involved in water pollution or water quality.

SEC. 146.5. Section 13026 of the Water Code is repealed.

SEC. 147. Section 13050 of the Water Code is amended to read:

13050. Each regional board shall:

(a) Establish an office.

(b) Select one of its members as chairman at the first regular meeting held each year.

(c) Appoint as its confidential employee, exempt from civil service, under paragraph (5) of subdivision (a) of Section 4 of Article XXIV of the Constitution, and fix the salary of, an executive officer who shall meet technical qualifications as defined by the State Water Resources Control Board. The executive officer shall serve at the pleasure of the regional board.

Notwithstanding the amendment of this subdivision at the 1963 Regular Session, any person incumbent in the position of executive officer on the effective date of such amendment shall continue to serve at the pleasure of his appointing board.

(d) Employ such other assistants as may be determined necessary to assist the executive officer.

SEC. 148. Section 20627 of the Water Code is amended to read:

20627. Pending the completion of the preliminary surveys and field investigations, the State Water Resources Control Board may withhold from appropriation any unappropriated water likely to be needed by the district.

SEC. 155. Section 3 of the Water Pollution Control Law of 1965 (Chapter 1351, Statutes of 1965) is amended to read:

Sec. 3. To protect the quality of the San Francisco Bay-delta area waters for the present and future beneficial uses thereof, the State Water Resources Control Board, in cooperation with the San Francisco Bay, Central Coastal, North Coastal, and Central Valley Regional Water Quality Control Boards, and the Departments of Public Health, Fish and Game, and Water Resources, is authorized and directed to make a comprehensive study of the effects of waste and drainage water discharges into the waters of the San Francisco Bay-delta area and to develop the basic features of a comprehensive plan for the control of water pollution, including a system for the collection, reclamation, treatment, and disposal of waste and drainage water discharges in and to the waters of the San Francisco Bay-delta area in the most effective and economic manner. In development of such comprehensive plan the board shall study any adjacent coastal waters which might be affected by any plans under investigation as well as those drainage areas which, although physically outside the San Francisco Bay-delta area, are found to be so near proposed facilities as to logically warrant inclusion in the comprehensive system. The board shall also study any discharges of drainage and waste waters originating outside the San Francisco Bay-delta area which may adversely affect the quality of the waters of the area and shall provide for the mitigation of such adverse effects insofar as possible.

In conducting the investigation and study, the State Water Resources Control Board shall consider, among other matters, and without limitation as to the generality thereof, the physical and economic effects of existing and proposed water development projects of federal, state and local agencies, and of authorized and prospective drainage projects of whatever nature upon the waters of the San Francisco Bay-delta area, the feasibility of reclaiming drainage waters from such projects, the future population growth and economic development in the area and in areas tributary thereto, the effects of existing and proposed projects for the filling and reclamation of waterfront lands upon the waste assimilative capacity of the waters of the San Francisco Bay-delta area, the possibilities of reclamation and reuse of waste waters and drainage water from such projects, and the feasibility of flow augmentation through managed releases from upstream reservoirs as an aid to quality maintenance.

The intention of the Legislature is that the State Water Resources Control Board shall conduct the study so as to determine the need for and the feasibility of a comprehensive multiple-purpose waste collection and disposal system serving the entire San Francisco Bay-delta area, as well as other measures for maintenance of the quality of the waters of such area at proper levels for the beneficial uses to be made thereof, including, but not necessarily limited to, municipal, industrial and agricultural water supplies, fish and wildlife, recreation and navigation. It is the further intention of the Legislature that the comprehensive plan for control of water pollution shall be consistent with any master land use and development plans prepared for the San Francisco Bay-delta area by the proposed San Francisco Bay Conservation and Development Commission.

SEC. 156. Section 4 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 4. The State Water Resources Control Board may contract with such state, federal or local public agencies or private agencies or entities, as it deems necessary for the rendition and affording of such management and technical services, facilities, studies, and reports as will best assist it to carry out the purposes of this act.

SEC. 157. Section 5 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 5. The State Water Resources Control Board, in conducting the San Francisco Bay-delta area study, is directed to call on the advice, counsel, and guidance, and participation of appropriate local, state, and federal agencies. The board shall, to the fullest practicable extent, cooperate and coordinate its work with all agencies undertaking planning and technical investigations pertinent to this study. The State Water Resources Control Board is directed to coordinate its study and, in order to avoid duplication of work, shall make maximum use of data and information available from state agencies, federal agencies, including but not limited to the U.S. Public Health Service and the U.S. Corps of Engineers, the planning programs of the Association of Bay Area Governments, the cities and counties of the San Francisco Bay-delta area, and other public and private agencies within the San Francisco Bay-delta area and the Central Valley and the studies by the proposed San Francisco Bay Conservation and Development Commission.

The board is further directed to encourage agencies of local government to undertake studies of local waste disposal problems which can be integrated into the master plan. For the purpose of assisting the board in the establishment and execution of the San Francisco Bay-delta area study provided for in Section 3, there is hereby established a steering committee which is composed of the following members or their designated alternates:

(a) The Chairman of the State Water Resources Control Board, who shall serve as chairman.

(b) The Chairman of the California Water Commission.

(c) The Chairman of the San Francisco Bay Conservation and Development Commission.

(d) A member of the State Reclamation Board designated by the board.

(e) The Chairman of the San Francisco Bay Regional Water Quality Control Board.

(f) The Chairman of the Central Coastal Regional Water Quality Control Board.

(g) The Chairman of the North Coastal Regional Water Quality Control Board.

(h) The Chairman of the Central Valley Regional Water Quality Control Board.

(i) The Chairman of the Association of Bay Area Governments.

(j) The Director of Water Resources.

(k) The Director of Public Health.

(l) The Director of Fish and Game.

(m) The Director of Parks and Recreation.

(n) The Administrator of the Resources Agency.

(o) The Administrator of the Health and Welfare Agency.

The Chairman of the Senate Committee on Water Resources and the Chairman of the Assembly Committee on Water shall meet with the committee and participate in its activities to the extent that such participation is not incompatible with their respective positions as Members of the Legislature.

For the purposes of this act the Members of the Legislature shall be considered a joint committee of the two houses of the Legislature and constitute an investigating committee on the subject of this act; and, as such, shall have the powers and duties imposed on such a committee by the Joint Rules of the Senate and Assembly and, in accordance with those rules, shall be allowed, out of the Contingent Funds of the Senate and the Assembly, their expenses incurred for mileage and other purposes in the exercise or performance of such powers or duties.

To assist the State Water Resources Control Board in coordinating its study program with the activities of other agencies, there is hereby established a technical coordinating committee which is composed of the following members or their designated alternates:

(a) The Chief of the Division of Water Quality Control of the State Water Resources Control Board who shall serve as chairman.

(b) The executive officers of the San Francisco Bay, Central Coastal, North Coastal, and Central Valley Regional Water Quality Control Boards.

(c) The Executive Director of the San Francisco Bay Conservation and Development Commission.

(d) The Executive Director of the Association of Bay Area Governments.

(e) One representative each from the Departments of Water Resources, Public Health, Fish and Game, Conservation, and Parks and Recreation.

(f) The Director of the Water Resources Center of the University of California.

(g) The Chief Engineer of the State Reclamation Board.

(h) One representative of municipalities, one representative of county government, one representative of water or sanitation districts, and one representative of private industry from within the San Francisco Bay-delta area, appointed by the Governor.

(i) The United States Department of Health, Education, and Welfare, the United States Soil Conservation Service, the United States Corps of Engineers, the United States Fish and Wildlife Service, the United States Bureau of Reclamation, and the United States Geological Survey shall each be invited to appoint a representative to attend and participate in meetings of the technical coordinating committee. Such federal representatives shall have all the privileges of membership and shall be considered members of the committee.

SEC. 158. Section 6 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 6. The Departments of Water Resources, Public Health, Fish and Game, and Conservation shall provide, under service agreement, such staff assistance as the State Water Resources Control Board may require to properly administer the San Francisco Bay-delta area study.

SEC. 159. Section 7 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 7. The State Water Resources Control Board shall appoint consultants in the fields of water quality, pollution control, waste disposal and water supply, and regional planning. The consultants shall advise and recommend to the board concerning the following matters:

(a) The identification of waste disposal studies now underway and the review of data being collected that relates to water.

(b) Preparation of a detailed plan for conduct of the study.

(c) The selection and contacting of those agencies, public and private, which are to participate in the study.

(d) The direction, management and supervision of conduct of the study and preparation of the reports on the study by the participating agencies.

(e) The submission of the required reports to the board.

SEC. 160. Section 8 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 8. On or before the fifth legislative day of 1966 Regular (Budget) Session, the State Water Resources Control Board shall submit to the Legislature a preliminary report setting forth the detailed scope of the San Francisco Bay-delta area study, including the alternatives to be investigated,

the work program to accomplish the study, and the estimated cost thereof.

SEC. 161. Section 9 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 9. On or before the fifth legislative day of the 1967 Regular Session, the State Water Resources Control Board shall submit to the Legislature a progress report indicating the status of the investigation to date.

SEC. 162. Section 10 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 10. The State Water Resources Control Board shall submit a report on the San Francisco Bay-delta area study to the Legislature on or before the fifth legislative day of 1969 Regular (Budget) Session. The report shall include but is not necessarily limited to, the following:

(a) Recommendations for regional waste collection, treatment and disposal system and other means of maintaining proper quality levels for the water concerned, which will provide guidelines for the systematic development of a comprehensive pollution control program.

(b) Overall cost estimates for the construction and operation of the recommended plan.

(c) Recommendations for the form of governmental entity or authority which would be best able to further develop and implement a comprehensive water pollution control plan and program.

(d) Recommendations as to the equitable apportionment of cost of development, construction and operation among the various beneficiaries of the plan.

(e) Recommendations as to the schedule for staged development of the various phases of the comprehensive plan.

(f) Delineation of the major subject areas, with estimates of cost, for additional studies which are considered essential to the further development of a regional, comprehensive water pollution control plan in the San Francisco Bay-delta area.

SEC. 163. Section 11 of the Water Pollution Control Law of 1965 is amended to read:

Sec. 11. Before completion of the reports required by Sections 8 and 9 of this act, the State Water Resources Control Board and the California Water Commission shall jointly hold at least three public hearings in both the areas of the receiving waters and the sources of drainage discharge. In formulating its final recommendations for these reports, the State Water Resources Control Board shall give full consideration to the views of the California Water Commission and the recommendations of said commission shall be transmitted to the Legislature as a part of said reports.

SEC. 163.5. It is the intent and purpose of the Legislature by this act to further the concept of the original Dickey Water Pollution Act for regional water pollution control which has proven, over the years, to be the best means of in-

volving all levels of government in accomplishing cooperative and effective control of water pollution and water quality.

SEC. 164. Section 136.1 of this act shall become operative only if Assembly Bill No. 1222 is enacted into law by the Legislature at its 1967 Regular Session, and in such case Section 10500 of the Water Code as amended by Section 136.05 of this act is repealed. This act shall become operative on the first day of the month following the effective date of the act.

CHAPTER 285

An act to amend Section 1605 of, and to add Section 1605.5 to, the Revenue and Taxation Code, relating to property tax assessments, declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 7, 1967. Filed with
Secretary of State June 7, 1967.]

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

SECTION 1. Section 1605 of the Revenue and Taxation Code is amended to read:

1605. After giving notice as prescribed by its rules, the county board shall equalize the assessment of property on the local roll by determining the full cash value of an individual assessment and by reducing or increasing an individual assessment as provided in this section.

For the purpose of the equalization proceedings, it is conclusively presumed that the average ratio of assessed value to full cash value in the county is not more than 115 percent of the latest preliminary or final ratio determined by the board pursuant to Article 1 (commencing with Section 1815) of Chapter 2 of this part.

The applicant for a reduction in an assessment on the local roll shall establish the full cash value of the property by independent evidence. The records of the assessor may be used as part of such evidence.

The county board shall make a determination of the full cash value of each parcel for which an application for equalization is made. After determining the full cash value of a parcel of property, the county board shall establish the assessed value of the property at the lower of:

(a) An amount equal to the property's full cash value, as determined by the county board, multiplied by the ratio established under Section 401.

(b) An amount equal to the property's full cash value, as determined by the county board, multiplied by 115 percent of the board's preliminary or final ratio for the county.

(c) An amount equal to the property's full cash value, as determined by the county board, multiplied by the ratio of

CALIFORNIA LEGISLATURE

1967 Regular Session
1967 First Extraordinary Session

SUMMARY DIGEST

of

STATUTES ENACTED

and

RESOLUTIONS ADOPTED

Ch. 281 (SB 448) COLOGNE Amends Sec. 47962, Ag.C., as enacted by Ch. 15, Stats. 1967, re grape maturity standards.

Specifically prescribes maturity standards for Robin variety of grapes and makes provision applicable only to those shipped in containers specifically marked with a statement that the grapes are of that variety only.

In effect immediately.

Ch. 282 (SB 589) KENNYCK Adds Sec. 21162, Gov.C., re employment of retired persons.

Permits a person retired under the State Employees' Retirement Law to be appointed by a state agency when such appointment would prevent the stoppage of public business or because the employee has special skills.

Provides that such appointments shall not exceed 30 working days per year and that the rate of pay shall not exceed that paid to other employees with the same duties and that such appointments shall have no effect upon the person's retired status nor confer any additional rights to retirement benefits on him.

Provides that section shall not apply to specified exceptions to prohibition against employment of retired persons by state agencies.

Ch. 283 (AB 1222) DAVIS Amends Sec. 10500, Wat.C., re appropriation of water.

Extends until 61st day after adjournment of the 1971 Regular Session the provision exempting applications for the appropriation of water made by the Department of Water Resources from the diligence provision generally applicable to appropriations of water.

In effect immediately.

Ch. 284 (Relating clause corrected) (AB 163) PORTER Amends, amends and rennumbers and adds various secs., Wat.C., and Ch. 1351, Stats. 1965, re water resources control board.

Abolishes State Water Rights Board and the State Water Quality Control Board and establishes State Water Resources Control Board within the Resources Agency.

Vests in the board all state power and responsibility relative to the supervision of water appropriation pursuant to permit or license and water pollution and water quality.

To become operative on first day of month following the effective date of the act.

Ch. 285 (AB 275) KNOX Amends Sec. 1605, adds Sec. 1605.5, R. & T.C., re property taxation: assessment.

Requires a county board to make a record of equalization proceedings, rather than transcribing such proceedings and requires a county board, if a taxpayer makes a request therefor, to supply the taxpayer with written findings of fact and conclusions of law, rather than allowing any such request suffice to require the county board to provide such matters.

Creates a conclusive presumption that the average ratio of assessed value to full cash value of property is not more than 115 percent of the latest preliminary or final ratio as determined by the board, rather than a 15 percent deviation being prima facie evidence of an inequitable assessment.

Requires the applicant for an assessment reduction to establish, by independent evidence, the full cash value after which the board shall determine the full cash value and establish the assessed value. Establishes a formula for deriving assessed value.

In effect immediately.

Ch. 286 (AB 619) CHAPPIE Amends, adds, and repeals various secs., B. & P.C., re weights and measures.

Eliminates the position of Deputy State Sealer of Weights and Measures, and revises provisions relating to appointment of county sealer.

Ch. 287 (AB 690) Z'BERG Adds Sec. 51335.5, Wat.C., Sec. 7 $\frac{1}{2}$, Knight's Landing Ridge Drainage District Act (Ch. 99, Stats. 1913), and Sec. 7 $\frac{1}{2}$, Sacramento River West Side Levee District Act (Ch. 361, Stats. 1915), re district assessments.

Authorizes boards of reclamation and specified special districts to set a minimum assessment not to exceed \$2 for each separately assessed parcel of land in the event the assessment for such land is otherwise less than \$2.

Volume 5

Indexes to Journal of the Assembly

Legislature of the State of California

1967 Regular Session
January Second to September Eighth

1967 First Extraordinary Session
September 5 to September 7

1967 Second Extraordinary Session
November 6 to December 8



HON. JESSE M. UNRUH
Speaker of the Assembly

HON. CARLOS BEE
Speaker pro Tempore of the Assembly

HON. GEORGE ZENOVICH
Majority Floor Leader

HON. ROBERT T. MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk of the Assembly

ASSEMBLY BILLS—Continued

No

- 151 Introduced, held at desk, 170, to committee, 173, from committee, amended (author's), 571, engrossed, re-referred, 595, from committee, 638, read second time, 688, passed, to Senate, 714; from Senate without action, 6758
- 152 Introduced, held at desk, 173; to committee, 185, from committee, 1141, read second time, 1193, engrossed, 1208; passed, to Senate, 1242, from Senate, 2496, enrolled, to Governor, 2626, approved, Chapter 181
- 153 Introduced, held at desk, 174, to committee, 155, from committee, 761, amended, 789, engrossed, 811, read second time to Consent Calendar, 816, passed, to Senate, 894, from Senate, 2024, enrolled, to Governor, 2320, approved, Chapter 135
- 154 Introduced, held at desk, 174, to committee 185, from committee, 779, amended, 822, engrossed, 853, read second time, 857, passed, to Senate, 887, from Senate, with amendments, 1664, amendments concurred in, 1708, enrolled, to Governor, 1758, approved, Chapter 61
- 155 Introduced, held at desk, 174; to committee, 185, from committee without action, 6748
- 156 Introduced, held at desk, 174, to committee, 185, from committee without action, 6746
- 157 Introduced, held at desk, 176, to committee, 185, from committee without action, 6747
- 158 Introduced, held at desk, 176, to committee 185, subject matter to Committee on Rules 2385, from committee without action, 6746
- 159 Introduced, held at desk, 176, to committee, 185, from committee, re-referred 1797, from committee, 3919, read second time, 3951, engrossed, 3984, passed, to Senate, 4046, from Senate without action, 6759
- 160 Introduced, held at desk, 176, to committee, 185, from committee without action, 6749
- 161 Introduced, held at desk, 176, to committee 155, from committee, 811, read second time, 857, engrossed, 864, passed, to Senate 888, from Senate, 1268, enrolled, to Governor, 1345, approved Chapter 37
- 162 Introduced, held at desk, 177, to committee, 185, from committee, amended (author's), 901; engrossed, re-referred, 913, from committee, 1106, amended, 1149, re-engrossed, re-referred, 1225, from committee, 1452; amended, 1538, read second time, 1616, re-engrossed, 1659, urgency clause adopted, passed, to Senate, 1682, from Senate with amendments, 3886, amendments concurred in, 3961, enrolled, to Governor, 4131, approved, Chapter 360
- 163 Introduced, held at desk, 178, to committee 185, from committee, amended (author's), 1209, engrossed, re-referred 1262, from committee, re-referred, 1699, from committee, 1821, read second time, 1874, passed, to Senate, 1936, from Senate with amendments, 3121, amendments concurred in, 3218, enrolled to Governor 3503, approved, Chapter 284
- 164 Introduced, held at desk, 179, to committee, 185, from committee, 1209, amended (author's), 1213, engrossed re-referred, 1262, from committee re-referred, 1398, from committee, amended (author's), 1640, re-engrossed, re-referred, 1718, from committee, amended (author's) 2067, re-engrossed, re-referred, 2283, from committee 2362, read second time 2403, message from Governor, passed, to Senate 2469, from Senate with amendments, 5771, amendments concurred in, 5952, enrolled to Governor, 6124, approved, Chapter 1446
- 165 Introduced held at desk, 179 to committee 185, from committee, amended (author's), 1232, engrossed, re-referred, 1300, from committee, amended (author's), 1915 re-engrossed re-referred 2008, from committee amended (author's), 3367, re-engrossed re-referred, 3459, from committee, re-referred, 3579 from committee, amended (author's), 4064, re-engrossed re-referred, 4072, from committee 4192, read second time 4279, passed to Senate, 4364, from Senate, 6078, enrolled, to Governor, 6532, approved, Chapter 1417
- 166 Introduced, held at desk, 179, to committee, 185, from committee, 805, amended (author's), 807, engrossed re-referred 853, from committee, 1032 amended, 1080, re-engrossed re-referred, 1130, from committee, amended (author's) 1215, re-engrossed re-referred, 1225 from committee 1368, read second time, 1412, passed, to Senate, 1541, from Senate, with amendments 3325, amendments concurred in 3430, enrolled, to Governor, 3577, approved, Chapter 323
- 167 Introduced, held at desk, 179, to committee 185, from committee, amended (author's) 613, engrossed, re-referred, 638, from committee 1107, read second time, to Consent Calendar, 1161, passed, to Senate 1244, from Senate, with amendments, 2596, amendments concurred in, 2659, enrolled, to Governor, 2801, approved, Chapter 207

Volume 3

Journal of the Senate

Legislature of the State of California

1967 Regular Session

January Second to September Eighth



HON. ROBERT H. FINCH
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

J. A. BEEK
Secretary

A.B. No.

- 140 From Assembly, read first time, to committee, 687; from committee, 1222; read second time, 1265; read third time, passed, title approved, to Assembly, 1290
- 142 From Assembly, read first time, to committee, 643; from committee, read, amended and re-referred to committee, 855; from committee, re-referred to committee, 980; from committee, read, amended and re-referred to committee, 1078; from committee, 1172; read second time, 1198; read third time, passed, title approved, to Assembly, 1241; Senate amendments concurred in, 1298
- 144 From Assembly, read first time, to committee, 2098; returned to Assembly, 2170; from Assembly, read first time, to committee, 2229; returned by committee without action, 4807
- 147 From Assembly, read first time, to committee, 976; from committee, read, amended and re-referred to committee, 1385; from committee, re-referred to committee, 1483; from committee, read, amended and re-referred to committee, 1686; from committee, 1844; read second time, 1902; read third time, passed, title approved, to Assembly, 2552; Senate amendments concurred in, 2574
- 148 From Assembly, read first time, to committee, 531; from committee, 609; read second time, amended, 623; re-referred to committee, 624; from committee, 651; read second time, 672; read third time, passed, title approved, to Assembly, 698; Senate amendments concurred in, 761
- 149 From Assembly, read first time, to committee, 532; from committee, 609; read second time, amended, 624; re-referred to committee, 625; from committee, 651; read second time, 673; read third time, passed, title approved, to Assembly, 698; Senate amendments concurred in, 761
- 150 From Assembly, read first time, to committee, 976; from committee, re-referred to committee, 1317; from committee, 1451; read second time, 1490; read third time, passed, title approved, to Assembly, 1612
- 151 From Assembly, read first time, to committee, 497; from committee, re-referred to committee, 2678; returned by committee without action, 4812
- 152 From Assembly, read first time, to committee, 846; from committee, 1367; read second time, 1427; read third time, passed, title approved, to Assembly, 1610
- 153 From Assembly, read first time, to committee, 619; from committee, 1222; read second time, 1263; read third time, passed, title approved, to Assembly, 1338
- 154 From Assembly, read first time, to committee, 619; from committee, 928; read second time, amended, 953; read third time, passed, title approved, to Assembly, 1068; Senate amendments concurred in, 1098
- 159 From Assembly, read first time, to committee, 2580; from committee, re-referred to committee, 3480; from committee, 3991; read second time, amended, 4089; ordered to inactive file, 4219
- 161 From Assembly, read first time, to committee, 619; from committee, 774; read second time, 796; read third time, passed, title approved, to Assembly, 844
- 162 From Assembly, read first time, to committee, 1075; from committee, re-referred to committee, 1349; from committee, 1631; read second time, 1671; read and amended, 2306; read third time, passed, title approved, to Assembly, 2488; Senate amendments concurred in, 2574
- 163 From Assembly, read first time, to committee, 1299; from committee, read, amended and re-referred to committee, 1320; from committee, re-referred to committee, 1483; from committee, 1631; read second time, amended, 1671; read third time, passed, title approved, to Assembly, 2054; Senate amendments concurred in, 2098
- 164 From Assembly, read first time, to committee, 1564; from committee, read, amended and re-referred to committee, 1947; from committee, re-referred to committee, 2033; from committee, 2927; read, amended and re-referred to committee, 2930; from committee, read, amended and re-referred to committee, 3163; from committee, 3797; read second time, 3853; read third time, passed, title approved, to Assembly, 4061; Senate amendments concurred in, 4091
- 165 From Assembly, read first time, to committee, 2845; from committee, re-referred to committee, 3080; from committee, 3942; read second time, 3994; read third time, passed, title approved, to Assembly, 4219
- 166 From Assembly, read first time, to committee, 976; from committee, read, amended and re-referred to committee, 1386; from committee, re-referred to committee, 1636; from committee, 2022; read second time, 2087; read third time, passed, title approved, to Assembly, 2211

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 134
AUTHOR : Dickinson
TOPIC : Appropriation of water: Sacramento Regional County Sanitation District.

TYPE OF BILL :

Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2011

Sept. 6 Chaptered by Secretary of State - Chapter 212, Statutes of 2011.
Sept. 6 Approved by the Governor.
Aug. 24 Enrolled and presented to the Governor at 11:30 a.m.
Aug. 18 In Assembly. Ordered to Engrossing and Enrolling.
Aug. 18 Read third time. Passed. Ordered to the Assembly. (Ayes 28. Noes 10. Page 1961.)
July 12 Read second time. Ordered to third reading.
July 11 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
June 28 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (June 28). Re-referred to Com. on APPR.
June 2 Referred to Com. on N.R. & W.
May 26 In Senate. Read first time. To Com. on RLS. for assignment.
May 26 Read third time. Passed. Ordered to the Senate. (Ayes 42. Noes 23. Page 1564.)
May 16 Read second time. Ordered to third reading.
May 12 From committee: Do pass. (Ayes 12. Noes 4.) (May 11).
Apr. 27 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 1.) (April 26). Re-referred to Com. on APPR.
Apr. 25 Re-referred to Com. on W., P. & W.
Apr. 15 From committee chair, with author's amendments: Amend, and re-refer to Com. on W., P. & W. Read second time and amended.
Apr. 5 In committee: Set, first hearing. Hearing canceled at the request of author.
Apr. 4 Measure version as amended on March 23 corrected.
Mar. 24 Re-referred to Com. on W., P. & W.
Mar. 23 From committee chair, with author's amendments: Amend, and re-refer to Com. on W., P. & W. Read second time and amended.
Feb. 3 Referred to Com. on W., P. & W.
Jan. 13 From printer. May be heard in committee February 12.
Jan. 12 Read first time. To print.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

ASSEMBLY BILL

No. 134

Introduced by Assembly Member Dickinson
(Principal coauthor: Senator Steinberg)

January 12, 2011

An act to add Section 1486 to the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 134, as introduced, Dickinson. Appropriation of water: Sacramento Regional County Sanitation District.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water.

Existing law requires the owner of a wastewater treatment plant to obtain the approval of the state board prior to making any changes in the point of discharge, place of use, or purpose of use of treated wastewater, and requires the state board to review the proposed changes in accordance with prescribed procedures.

This bill would authorize the Sacramento Regional County Sanitation District to file an application for a permit to appropriate a specified amount of water that is based on the volume of treated wastewater that the district discharges into the Sacramento River and recovers for reuse. The bill would require the state board to grant a permit to appropriate that treated wastewater upon terms and conditions determined by the state board. The bill would exempt from the above-described approval and review requirements, the appropriation of water, and any change in the point of discharge, place of use, or purpose of use of treated

wastewater, in accordance with a permit granted pursuant to the bill's provisions.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Sacramento Regional County Sanitation District.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) The conservation of all available water resources requires
4 the maximum reuse of recycled water in satisfying the requirements
5 for beneficial uses of water.
- 6 (b) Encouraging water conservation and water recycling are
7 commonsense methods to make more efficient use of existing
8 water supplies.
- 9 (c) The people of the State of California have a primary interest
10 in the development of facilities to recycle wastewater to supplement
11 existing surface water and groundwater supplies and to assist in
12 meeting the future water requirements of the state.
- 13 (d) Providing a more reliable water supply for the state includes
14 the implementation of wastewater reclamation projects.
- 15 (e) The Legislature has established statewide goals to recycle
16 a total of seven hundred thousand acre-feet of water per year by
17 the year 2000 and one million acre-feet of water per year by the
18 year 2010.
- 19 (f) It is the intent of the Legislature that the state expeditiously
20 undertake all possible steps to continue to encourage the
21 development of water recycling facilities so that recycled water
22 may be made available to meet the growing water requirements
23 of the state.
- 24 (g) It is the policy of the state that each region that depends on
25 water from the Sacramento-San Joaquin Delta watershed should
26 improve its regional self-reliance for water through investment in
27 water recycling, and local and regional water supply projects.
- 28 (h) It is in the best interest of the people of the State of
29 California, in enacting this act, to provide an additional means for
30 the Sacramento Regional County Sanitation District to realize the

1 benefit of its production and discharge of high-quality recycled
2 water, and to provide a potential revenue stream to offset the high
3 costs associated with upgrades to the sanitation district's
4 wastewater treatment plant, to meet new wastewater treatment
5 requirements under the national pollutant discharge elimination
6 system permit issued by the California Regional Water Quality
7 Control Board, Central Valley.

8 SEC. 2. Section 1486 is added to the Water Code, to read:

9 1486. (a) The Sacramento Regional County Sanitation District,
10 and any successor thereto, with respect to treated wastewater
11 produced by the sanitation district that meets the requirements of
12 the appropriate regional board, and that is discharged into the
13 Sacramento River, may file an application for a permit to
14 appropriate an amount of water that is equal to either of the
15 following:

16 (1) Up to the amount of treated wastewater that is discharged
17 into the Sacramento River, if the treated wastewater is delivered
18 directly for reuse prior to discharge.

19 (2) Up to the amount of treated wastewater that is discharged
20 into the Sacramento River, less diminution by seepage, evaporation,
21 transportation, or other natural causes between the point of
22 discharge from the wastewater treatment plant and the point of
23 recovery for reuse.

24 (b) Upon application for a permit to appropriate water pursuant
25 to subdivision (a), the board shall grant the permit subject to the
26 terms and conditions as in the board's judgment are necessary for
27 the protection of the rights of others.

28 (c) The appropriation of water, or any change in the point of
29 discharge, place of use, or purpose of use of treated wastewater,
30 in accordance with this section, shall not be subject to Section
31 1211.

32 (d) Water appropriated in accordance with this section may be
33 sold or utilized for any beneficial purpose.

34 (e) The right to the use of water granted by this section shall
35 not include water flowing in underground streams.

36 SEC. 3. The Legislature finds and declares that a special law
37 is necessary and that a general law cannot be made applicable
38 within the meaning of Section 16 of Article IV of the California
39 Constitution because of the unique problems applicable to the full
40 utilization of the waters of the Sacramento River and the

- 1 Sacramento-San Joaquin Delta, into which treated wastewater
- 2 discharged by the Sacramento Regional County Sanitation District
- 3 flows.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2006 - 0007

In the Matter of
Petition For Reconsideration of the Approval of Application 30531A
and the Issuance of Permit 21176
to the
City of Stockton

ORDER DENYING RECONSIDERATION AND REISSUING PERMIT

BY THE BOARD:

1.0 INTRODUCTION

On December 20, 2005, the Chief of the Division of Water Rights (Division) of the State Water Resources Control Board (State Water Board) conditionally approved Application 30531A and issued Permit 21176 to the City of Stockton (City). The permit authorizes the diversion and use of up to 33,600 acre-feet per year (afa) of water to be diverted from the San Joaquin River for municipal and industrial purposes. The maximum rate of diversion is 317 cubic feet per second (cfs). Because the water to be appropriated under this permit is made available pursuant to Water Code section 1485, the amount of water available under this permit also is limited to the amount of the fifteen-day running average of properly treated effluent discharged from the City of Stockton's Regional Wastewater Control Facility into the San Joaquin River, or less.

The State Water Resources Control Board (State Water Board) received a timely petition for reconsideration of the Division Chief's approval of the application on behalf of the San Luis & Delta-Mendota Water Authority (Authority) acting on behalf of its member agencies¹ and the

¹ The Authority states that its members include: Banta-Carbona Irrigation District, Broadview Water District, Byron Bethany Irrigation District, Central California Irrigation District, Centinella Water District, City of Tracy, Columbia Canal Company, Del Puerto Water District, Eagle Field Water District, Firebaugh Canal Water District, Fresno Slough Water District, Grassland Water District, James Irrigation District, Laguna Water District, Mercy Springs Water District, Oro Loma Water District, Pacheco Water District, Pajaro Valley Water Management
[footnote continues on next page]

Westlands Water District. This order denies reconsideration and amends the permit by adding a condition reserving the State Water Board's jurisdiction to amend the permit, after notice and opportunity for hearing, if the Board receives certain evidence.

2.0 BASES FOR RECONSIDERATION AND POSITION OF THE AUTHORITY

The State Water Board's regulation at California Code of Regulations, title 23, section 768, authorizes reconsideration based upon any of the following causes:

- a. Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- b. The decision or order is not supported by the evidence;
- c. There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- d. Error in law.

The Authority requests reconsideration under the first, second, and fourth bases for reconsideration. The Authority claims that although City filed Application 30531 nearly ten years ago, Authority did not understand the true nature of Application 30531 until 2005 when the State Water Board bifurcated Application 30531 at City's request. The Authority also claims that the environmental documentation shows that there will be harm to the water rights of the CVP and that Water Code section 7075 requires a limit on Permit 21176 to avoid reducing the amount of water available to the CVP under its appropriations.

The Authority did not file a timely protest against Application 30531. In 2005, years after the period had expired to file a protest, Authority requested that the Division re-notice the application so that the Authority could file a protest of the application. The Authority contended that the proposed appropriation had changed and that the regulatory environment had changed.

Agency, Panoche Water District, Patterson Irrigation District, Pleasant Valley Water District, Reclamation District 1606, San Benito County Water District, San Luis Canal Company, San Luis Water District, Santa Clara Valley Water District, Tranquility Irrigation District, Turner Island Water District, West Side Irrigation District, West Stanislaus Irrigation District, Westlands Water District, and Widren Water District.

On December 16, 2005, the Division denied the request to re-notice and pointed out that there were no remaining unresolved protests against the application, that the Delta Water Supply Project (DWSP) of the City would use the application to appropriate the water, and that the DWSP included a series of phases of development. The first phase of the DWSP is the part that will use Application 30531A. Phase I of the project, which will use water under Application 30531A pursuant to Water Code section 1485, has not changed except to the extent that it now is called Phase I. As discussed below, the State Water Board finds no substantial basis to re-notice the application so that the Authority can file a protest.

The Authority claims that the City's environmental documentation is defective, and consequently the Authority has filed a challenge to the City's action based on an alleged violation of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) The Authority's concern is that its supply of water from the federal Central Valley Project (CVP) will be reduced in some measure because the CVP will have to release additional water to control the higher salinity of the discharges from the City, leaving less water for the CVP contractors, including the members of the Authority. The Authority believes that Permit 21176 is not adequately conditioned to prevent injury to CVP contractors.

3.0 DISCUSSION

3.1 Allegation That Denial of Re-Noticing Is Procedural Error

The Authority's allegation of procedural error because the Division did not re-notice the application is not adequately supported. Under its regulation at California Code of Regulations, title 23, section 684, the State Water Board will re-notice an application if the hearing has been delayed for more than one year after the close of the protest period "when, in its judgment, the record does not reflect up-to-date circumstances because of changes in the project or in the circumstances of affected downstream water users or other interested persons." Where, as with Application 30531, all of the protests have been dismissed and no hearing is needed based on the timely protests, a delay in processing is not cause for re-noticing the application. Further, formally bifurcating the project into phases is not a substantive change in the project, and

Permit 21176 represents only the first part of the project.² Accordingly, the Division did not err in refusing to re-notice the application.

3.2 Other Alleged Bases for Reconsideration

The Authority claims that the diversions under Permit 21176 will reduce the amount of water available to the CVP and the water supply contractors of the CVP, which include the Authority's members, thereby impairing their contractual rights to water from the CVP. The CVP, which is operated by the United States Bureau of Reclamation (Bureau), is the holder of the water rights that the Authority claims will be injured by the diversions. The Bureau, however, which holds the allegedly impaired water right, has agreed to the diversions under Permit 21176 as conditioned.

The Bureau agreed and stipulated in writing, dated November 29, 2004, to dismiss its protest against Application 30531 subject to the inclusion in any permits of Standard Permit terms 80 and 90. The stipulation also provides that Standard Permit Term 91 will be included for certain diversions by the City. The Bureau agreed that Standard Terms 80, 90 and 91 will not apply to diversions pursuant to Water Code section 1485. As discussed herein, Permit 21176 was issued solely for diversions pursuant to Water Code section 1485.³ Accordingly, it does not contain terms 80, 90 and 91. It does, however, contain the other provisions that the city and the Bureau

² Additionally, the State Water Board has no basis for finding that the circumstances of downstream water users or other interested persons have changed such as to justify re-noticing the application. The City alleges that the Authority has met with the City three times since November of 2003 regarding the project, and that the City sent the Authority a copy of the Notice of Preparation of the EIR in 2003.

³ Section 1485 provides:

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 Joaquin Delta into which it flows, are unique and that a general law cannot be made applicable thereto.

agreed to, to ensure compliance with Water Code section 1485. These conditions require record-keeping of diversions and discharges, computation of running averages, a limit of the amount of water diverted to an amount less than or equal to the amount discharged from the treatment plant, and reporting requirements.

Considering that the Bureau has withdrawn its protest after agreeing to the terms and conditions that in fact are contained in the permit, and the CVP holds the water rights involved, the water rights of the CVP cannot be deemed injured by the issuance of Permit 21176. The Authority claims to have contracts and thereby claims to be a legal user of the CVP's water. It has not, however, provided evidence that its members are CVP contractors and it also has not provided evidence, assuming it has contracts, to show that it has a right under its contract to any water that may be required for salinity control as a result of the diversions under Permit 21176. Under the reasoning of the Third District Court of Appeal in *State Water Resources Control Board Cases*, No. C044714, JCCP No. 4118, filed February 9, 2006, to claim injury as a result of a change petition, contractors must show that they have a right to a larger amount of water than would be provided after the Bureau meets its other obligations.⁴ The Authority has not done this. If they have contracts that contain a clause allowing the Bureau to deliver less water than the full amount of the contract, a clause that many Bureau contracts contain, any claim they may have is against the Bureau⁵ if the Bureau agrees to allow an appropriation that arguably may reduce the supply it delivers to its contractors. This alone does not result in dismissal of the Authority's petition for reconsideration, because any interested party may file a petition for reconsideration.

3.3 Physical Effect of the DWSP Diversions Under Water Code Section 1485

The Authority complains that the diversions will diminish the quantity of water appropriated by the CVP in its upstream reservoirs or will diminish the quantity of water delivered to the members of the Authority. Accordingly, the State Water Board now examines whether the approval of Application 30531A will, based on the evidence in the file, diminish the amount of

⁴ At the date of this order, the opinion in *State Water Resources Control Board Cases* is not yet final.

⁵ Because the current case addresses the approval of an application to appropriate water and not a change petition, the measure of whether the application can be approved is whether there is water available for the appropriation under Water Code, § 1202, not whether there will be injury to another legal user of water as would be the case when addressing a petition for change under § 1702.

water available to any existing appropriator of water from the San Joaquin River. The primary technical evidence in the file for this project is the Environmental Impact Report (EIR) for the DWSP. Based on the evidence in the State Water Board's record, the Authority's members likely would not be deprived of a measurable amount of water as a result of the diversions.

The EIR analyzes the potential effects of the DWSP on upstream CVP and State Water Project (SWP) reservoir storage levels and river flows, and Delta flows and export water operations with DWR's and Reclamation's California Simulation Model (CALSIM) II. According to the EIR, CALSIM II is generally regarded as the best available planning tool for analysis of the CVP and SWP system and regions tributary to the Delta. The EIR interprets model results using various statistical measures such as long-term or dry year-type averages.⁶ Project alternatives were modeled at the existing (2003) level-of-development (LOD) and at the future (2015) LOD. For the project-level cumulative analysis, the EIR compares the DWSP to the No Project alternative at a 2015 LOD.⁷ The project-level analysis of DWSP diversions of water from the Delta under section 1485 of the California Water Code compares the existing conditions (2003) with the effects of the diversions under the 2015 LOD.⁸

3.3.1 Effects on Upstream Water Storage

The Authority contends that the City's EIR projects reductions in storage that demonstrate a clear harm to the rights of the CVP and its water users and to their ability to continue to appropriate water for CVP purposes. In support of this contention, the Authority provides the following excerpt of summary results of reservoir carryover storage taken from the City's EIR.⁹

⁶ Dry periods are May 1928–October 1934, October 1976–September 1977, and June 1986–September 1992 for CVP and SWP deliveries and reservoir carryover storage.

⁷ The analysis evaluates the combined effects of the proposed project and other water supply programs and actions. The analysis estimates the conditions in 2015, corresponding to the approximate end of Phase 1 of the DWSP.

⁸ Modeling Technical Appendix to the Draft Environmental Impact Report – Delta Water Supply Project. (MWH, 2005).

⁹ *Id.*, p. 4-7.

Excerpt from Table 4-3

Summary Results, DWSP Compared to Future No Project, Cumulative Conditions, 2015 LOD

Reservoir Carryover Storage (1,000 AF)	DWSP, Cumulative Conditions, 2015 LOD		Future No Project, Cumulative Conditions, 2015 LOD		Difference: DWSP Minimum Future No Project	
	Long-Term	Driest Periods	Long-Term	Driest Periods	Long-Term	Driest Periods
Trinity Lake	1250	661	1253	668	-3	-7
Lake Shasta	2466	1427	2471	1439	-5	-13
Folsom Lake	485	336	486	337	-1	-2
CVP total NOD Storage	4432	2644	4442	2666	-10	-21
CVP San Luis Reservoir	244	239	245	243	-1	-4

The excerpted CALSIM II modeling data results, however, show relatively small changes in CVP carryover storage. For the 2015 LOD, the long-term average changes in the total CVP carryover storage is 11 thousand acre-feet (TAF), and the driest periods average change in the total CVP carryover storage is 25 TAF.¹⁰

The Authority contends that these projected reductions in storage demonstrate harm to the rights of the CVP and its water users, but these changes are less than one percent of the total average carryover storage of about 4.7 million acre-feet (MAF) (long-term) and 2.9 MAF for the CVP (driest periods). These changes in carryover storage are primarily an artifact of CALSIM II modeling, rather than reflecting a potential change in project operations.¹¹ Further, as the modeling technical appendix notes in citing a CALFED report, there appears to be no accepted standard for a threshold of significance with regard to model determinations of project impacts. CALFED estimates modeling uncertainty at 10 percent and identifies all impacts below 10 percent as less than significant.¹²

3.3.2 Effects on Delta Exports

Another measure of potential water supply impacts to CVP contractors is the modeled data relating to “Exports at Tracy Pumping Plant,” summarized in Table 4-7 of the EIR.¹³

¹⁰ CVP total north-of-Delta Storage plus CVP San Luis Reservoir.

¹¹ *Id.*, p. 4-3.

¹² *Id.*, p. 3-21.

¹³ DWSP - EIR, Vol. II, Ch. 4, p. 4-38.

Excerpt from Table 4-7 of the EIR

Average Annual Flows: Proposed DWSP Compared To 2015 No Project Conditions

Delta (1,000 AF)	Proposed DWSP		No Project		Difference: DWSP Minus No Project	
	Long-Term	Driest Periods	Long-Term	Driest Periods	Long-Term	Driest Periods
Export at Banks Pumping Plant	3631	2030	3636	2039	-5	-9
Export at Tracy Pumping Plant	2358	1610	2359	1612	-1	-2
Total Exports	5989	3640	5994	3651	-6	-10

The summarized data show that changes to CVP exports attributed to the DWSP would be 6 TAF (long-term) and 10 TAF (driest periods). These changes are less than one percent of the total exports of 5.9 MAF (long-term) and 3.6 MAF (driest periods). Based on modeling uncertainties, these water supply impacts are less than significant.

The Authority contends that if the CVP or SWP is required to meet water quality standards when the City operates its new diversion during dry years, the water required to meet those standards might be obtained by reducing exports from the southern Delta, because the SWP and CVP might not be able to re-operate their north of Delta reservoirs to provide additional water for Delta needs due to regulatory requirements for listed species.

To support these contentions, the Authority provides an assessment of potential impacts to water deliveries. The Authority's assessment concludes that a reduction in agriculture deliveries of approximately 42 percent (36,000 af), 20 percent (45,000 af) and 20 percent (65,000 af) occurred in representative dry years 1977, 1991 and 1992. These estimates are based on the following summarized data.

///
 ///
 ///

**2015 Study Results for Dry Year Periods
(1928-34, 1976-77, 1987-92)
(TAF)**

Year	CVP North of Delta Storage Impact	CVP Ag. Contractors South of Delta Delivery Impact	South of Delta Base Delivery Ag. Contractors	Adjusted Combined Impact*
1928	-10	-3	1179	-13
1929	-19	0	0	0
1930	-21	-5	483	-26
1931	-9	0	125	-9
1932	1	-4	150	-3
1933	-19	11	17	-8
1934	-11	-5	169	-16
1976	-18	0	314	-18
1977	-37	1	85	-36
1987	-13	9	440	-4
1988	-30	0	0	0
1989	-35	-12	790	-47
1990	-29	0	0	0
1991	-45	0	234	-45
1992	-46	-19	354	-65

* Adjusted combined impact adds the storage and delivery impact only in years where the base is greater than zero

Table 4-7 of the EIR provides a summary of the potential water supply impacts to CVP and SWP Deliveries.¹⁴

Excerpt from Table 4-7

**AVERAGE ANNUAL FLOWS, PROPOSED DWSP COMPARED TO 2015 NO PROJECT
CONDITIONS**

CVP/SWP Deliveries (1,000 AF)	Proposed DWSP		No Project		Difference: DWSP Minus No Project	
	Long-Term	Driest Periods	Long-Term	Driest Periods	Long-Term	Driest Periods
CVP NOD ¹⁵ Agricultural Deliveries	230	32	230	32	0	0
CVP NOD M&I Deliveries	38	41	38	41	0	0
CVP SOD Agricultural Deliveries	1071	159	1071	159	0	-1
CVP SOD M&I Deliveries	122	84	122	84	0	0
SWP Table A Deliveries	3182	1692	3186	1694	-4	-2
SWP Article 21 Deliveries	130	112	131	120	-2	-8

¹⁴ *Id.*, p. 4-38.

¹⁵ NOD means north of Delta.

The data show that the 2015 LOD long-term and driest year average changes in CVP North of Delta (NOD) and South of Delta (SOD) deliveries (agricultural deliveries, M&I) would be zero and 1 TAF, respectively. The 2015 LOD long-term and driest year average change in SWP deliveries (Table A and Article 21) would be 6 TAF and 10 TAF, respectively. Compared to the total CVP north-of-Delta and south-of-Delta deliveries and total SWP deliveries, this is less than 1 percent. Based on the accepted modeling uncertainties, these water supply impacts would be less than significant.

3.3.3 Effects of the DWSP Diversions on Delta Salinity

The Authority's arguments are based on the assumption that the DWSP will add salts to the Delta that will either result in violations of the salinity objective in the Delta, or cause the CVP and SWP to release water to dilute the salts, or cause the CVP and SWP to reduce deliveries to the export areas. The southern Delta salinity objectives for agricultural beneficial uses are the closest upstream objectives to the DWSP diversion.

Table 5-12 of the EIR's Modeling Technical Appendix to the Draft EIR shows the baseline and change in EC at selected locations in the Delta for the 16-year period of simulation 1976-1991.¹⁶ The following table compares this data for the four southern Delta compliance stations: the San Joaquin River at the Brandt Bridge site (Station C-6), Old River near Middle River (Station C-8), Old River at Tracy Road Bridge (Station P-12), and the San Joaquin River at Airport Way Bridge, Vernalis (Station C-10). The data show that DWSP would have virtually no effect on salinity at the four compliance locations. Therefore, it appears that no additional water would have to be released by the USBR to meet current water quality objectives because of the DWSP.

¹⁶ The water quality impact analysis was based on Delta Simulation Model, Ver. 2 (DSM2). CALSIM II was used to simulate monthly statewide reservoir operations, river flows and CVP-SWP deliveries for a 73-year period based on the 1922-1994 hydrologies. CALSIM II output provided flow (and salinity for the San Joaquin River) boundary conditions for DSM2. DSM2 calculated corresponding changes in water quality in the Delta compared to baseline conditions for a 16-year period (1976-1991). This 16-year period includes the 1976-77 two-year drought and the 1987-1992 six-year drought. This shorter period of simulation compared to CALSIM II (16 years vs. 72 years) is standard practice for DSM2 planning studies because of the modeling complexity for the water quality analysis and the availability of an astronomical tide. The Modeling Technical Appendix (MWH, 2005) to this EIR lists the DSM2 input assumptions and other factors that were used to assess potential impacts of the DWSP.

Water Quality Objectives (mmhos/cm) ¹⁷												
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Water Quality Objectives	1	1	1	1	1	1	0.7	0.7	0.7	0.7	0.7	0.7
AVERAGE MONTHLY EC, 2015 LOD (mmhos/cm)												
Old River near Middle River												
NO PROJECT:	0.520	0.528	0.556	0.543	0.536	0.571	0.257	0.426	0.511	0.588	0.549	0.582
DWSP:	0.521	0.528	0.556	0.543	0.536	0.571	0.257	0.426	0.511	0.588	0.550	0.583
Old River at Tracy Road Bridge												
NO PROJECT:	0.607	0.587	0.573	0.552	0.554	0.586	0.290	0.435	0.432	0.453	0.470	0.554
DWSP:	0.608	0.587	0.573	0.552	0.554	0.586	0.290	0.434	0.431	0.453	0.470	0.556
San Joaquin River near Vernalis												
NO PROJECT:	0.686	0.631	0.581	0.517	0.529	0.563	0.288	0.441	0.513	0.616	0.744	0.934
DWSP:	0.686	0.631	0.581	0.517	0.529	0.563	0.288	0.441	0.513	0.616	0.744	0.934
San Joaquin River at Brandt Bridge												
NO PROJECT:	0.686	0.634	0.593	0.547	0.536	0.571	0.296	0.449	0.518	0.617	0.733	0.927
DWSP:	0.686	0.634	0.593	0.547	0.536	0.571	0.296	0.449	0.518	0.617	0.733	0.927

3.4 Conclusions as to Impacts to the Authority

Based on the modeling analyses in the EIR, the State Water Board concludes that there is inadequate evidence in the record to establish that the diversions under Water Code section 1485 for the DWSP will result in a reduction in the amount of water delivered to the Authority's

¹⁷ Note: Salinity is determined by measuring the ability of water to conduct an electrical current. Salinity is expressed in two different ways, either as electrical conductivity (ECw) or total dissolved salts (TDS). There are several units commonly used to express ECw: deciSiemens per meter (dS/m), siemens per meter (S/m), microSiemens per centimeter (µS/cm), millimhos per centimeter (mmhos/cm), or micromhos per centimeter (µmhos/cm). The relationship between these units is: 1 dS/m = 0.1 S/m = 1000 µS/cm = 1 mmhos/cm = 1000 µmhos/cm.

members, assuming that they are water supply contractors and that they have a right to receive the full amount of water under their contracts from the CVP.

Under Water Code section 1201, however, the State Water Board will not permit a new appropriator to take water that is already appropriated except in certain circumstances, such as cases where the area of origin statutes allow a new appropriator to obtain priority over an existing appropriator. No such reversal of priority is involved in this case. In this case, the basis for making water available for the proposed appropriation is not an area of origin claim, but rather is Water Code section 1485, which allows the City to appropriate an amount of water equal to or less than its discharge of treated wastewater from its disposal plant into the San Joaquin River. The amount appropriated is to be reduced for the amounts of seepage, evaporation, transpiration, or other natural causes between the point of discharge and the point of diversion, downstream from the disposal plant. Under section 1485, the State Water Board may issue a permit to appropriate the water upon such terms and conditions as are necessary for the protection of the rights of others. To ensure that, despite any lack of information available at this time, the City's diversion does not result in a measurable diminution of the water supplies of the CVP, the SWP, or other existing water right holders, this order requires that Permit 21176 be re-issued to the City with all of the original terms and conditions and an additional condition. The additional condition requires that if the State Water Board determines, in the future, that the CVP or the SWP is releasing a measurable amount of additional water to dilute the discharges from the Stockton wastewater treatment plant that are recaptured under Permit 21176, the Board may reduce the amount of water that can be appropriated under Permit 21176 to protect the rights of the CVP or the SWP.

4.0 CEQA COMPLIANCE

4.1 Mitigation Measures

The City of Stockton has certified the Final Program Environmental Impact Report (EIR) and made findings and a Statement of Overriding Considerations. The State Water Board, as responsible agency, is required to consider the EIR and reach its own conclusions on whether and how to approve Application 30531A. The EIR lists the adverse impacts of the project as being less than significant with mitigation measures, or significant and unavoidable.

The EIR finds that 25 of the potential environmental effects¹⁸ would be reduced to less than significant with mitigation measures. The State Water Board, as responsible agency, has included terms and conditions numbered 17, 18, and 19 in the permit to mitigate for the effects of those parts of the project that it approves.¹⁹ These conditions require compliance with the water quality requirements of the Central Valley Regional Water Quality Control Board, fish screening to avoid entrainment of fish, and measures to protect special-status species.

Except for the impacts for which the State Water Board provides mitigation measures in the permit, the mitigation measures or alternatives that would avoid or substantially lessen the significant and unavoidable environmental effects are within the responsibility of the City, not the State Water Board, and have been, or should be adopted.

4.2 Findings of Overriding Considerations

The EIR found that four of the potential environmental effects of the project would be significant and unavoidable. The following adverse impacts of the project are listed in the EIR as being significant and unavoidable:

- The construction of the water treatment plant, proposed as part of the Delta Water Supply Project (Project), would result in the conversion of 56 acres of important farmland. Because all the surrounding lands are designated as Prime Farmland or Farmland of Statewide Importance, no alternative site is available that would reduce or avoid conversion of farmland.

¹⁸ Fish Entrainment and Impingement Mortality; Construction Noise, Turbidity, and Stranding Impacts to Fish; Interfere with Recreational Facilities; Williamson Act Contract; Agricultural Land Use Conflicts; Loss of Agricultural Land; Acceleration of Soil Erosion; Settlement and/or Associated Ground Failure; Hazards Associated with Regional Subsidence; Flooding; Impacts on Surface Water Quality; Increased Storm Water Runoff; Loss of Jurisdictional Waters of the U.S.; Impacts to Special-Status Species and Sensitive Communities; Impacts to Native Wildlife Migration Corridors or Nursery Sites; Conflict with City and/or County Tree Preservation Ordinances; Operation Air Emissions; Noise Impacts; Hazardous Materials and Wastes; Construction Disturbance of Contaminated Soil and/or Groundwater; Traffic Impacts; Block Access Routes; Construction Parking Demand; Disruption of Utility Services; Impacts on Police, Fire and Emergency Services.

¹⁹ These impacts are: Fish Entrainment and Impingement Mortality; Stranding Impacts to Fish; Impacts on Surface Water Quality; Loss of Jurisdictional Waters of the U.S.; Impacts to Special-Status Species and Sensitive Communities.

- The construction of the Project's intake facility would create significant visual impacts. The Project will damage scenic resources within a scenic route as well as degrade the existing visual quality. The Project will also create a substantial new source of nighttime light. Design of the facility and outdoor lighting will attempt to lessen the visual impacts of the intake facility. However, these effects are inherent in new construction in a natural setting.
- Project construction will cause a short-term increase of the emission of air pollutants. Generation of PM₁₀ emissions (dust) from construction activities and equipment will contribute to both Project and cumulative emissions for other ongoing construction projects. Also the generation of nitrogen oxide and reactive organic gas emissions from construction vehicles will contribute to both project and cumulative emissions for other ongoing construction projects. These effects will abate when Project construction is complete.
- Planned growth within the City of Stockton Metropolitan Area, supported by phased expansion of the Project, will have significant secondary effects including loss of agricultural land, loss of habitat, increased traffic and traffic congestion, air quality impacts, increased traffic noise, increased wastewater treatment demand, alteration of the region's visual character, and increased use of non-renewable fossil fuels. The social and economic benefits of appropriating the water to use for planned urban growth outweigh the secondary effects.

The City found that mitigation measures would not reduce these effects to less than significant. Changes or alterations to the project that would avoid or substantially lessen these environmental effects are within the responsibility of the City, not the State Water Board, and have been, or should be adopted.

The State Water Board, having reviewed and considered the information contained in the EIR, finds that no additional mitigation measures within the responsibility of the State Water Board are available for the identified environmental impacts.

The social and economic need for the requested appropriation of water outweighs the impacts described in the EIR. Therefore, on the basis of substantial evidence in the record and the findings set forth above, the State Water Board finds that the benefits of, and the need for, the Project outweigh the significant environmental impacts identified in the EIR.

5.0 CONCLUSIONS

1. None of the causes for reconsideration alleged by Authority is supported by the petition for reconsideration.
2. The Authority raises an important issue regarding the availability of water for appropriation by the City, due to the potential for the CVP and the SWP to be required to dilute salinity caused by the City's diversion of water under Permit 21176.
3. The Authority has filed an action against the City under CEQA and has notified the State Water Board of the action, but no stay or injunction has been granted. Accordingly, this order authorizes the City to proceed with the project at the City's risk.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for reconsideration of the Chief of the Division issuance of Permit 21176 is denied, and the action approving Application 30531A is amended. Permit 21176 shall be reissued in its entirety with the following additional conditions:

1. Condition 20 is added to read:

“The State Water Board reserves jurisdiction to amend this permit, after notice and opportunity for hearing, to reduce the maximum amount authorized to be diverted or require other appropriate action if the State Water Board receives new substantial evidence showing

that, due to the diversion of water under this permit, the SWP or the federal CVP is required to forego exports from the southern Delta or release from upstream storage additional water to meet salinity objectives in the Delta compared with the amount of water that the SWP or the federal CVP would have to forego exporting or release from upstream storage for salinity control in the absence of diversions under this permit.”

2. Condition 21 is added to read:

“In accordance with Public Resources Code, section 21167.3, the City is authorized under this permit to proceed with the project at the City’s risk.”

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 8, 2006.

AYE: Tam M. Doduc
Gerald D. Secundy
Arthur G. Baggett
Richard Katz

OPPOSED: None

ABSENT: None

ABSTAIN: None



Song Her
Clerk to the Board

PERMIT TERM 91

Title: Inbasin Entitlements - Delta and Tributary Rivers

When Used: Permits of 1 cfs or more or 100 afa of storage or more within the Sacramento, Consumnes, Mokelumne, Calaveras, or San Joaquin River Basins or the Sacramento - San Joaquin Delta when hydraulic continuity with the Delta exists, or is likely to exist, during the requested diversion season. Exceptions are the Putah Creek, Stony Creek, and Cache Creek watersheds.

Term:

No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

- a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.
- b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Resources Control Board shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

(0000091)

PERMIT TERM 90

Title: Reduction of Diversion Season - Delta and Tributary Rivers

When Used: For diversion from the Sacramento, Cosumnes, Mokelumne, Calaveras, or San Joaquin River Basins or the Sacramento - San Joaquin Delta when hydraulic continuity with the Delta exists, or is likely to exist, during the requested diversion season. Also for diversion from Russian River Watershed.

Term:

This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the _____* are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the SWRCB, made after notice to interested parties and opportunity for hearing.

(0000090)

- * Sacramento, Cosumnes, Mokelumne, Calaveras, or San Joaquin River Basins or Sacramento - San Joaquin Delta or Russian River Watershed

PERMIT TERM 80

Title: Reserved Jurisdiction - Delta and Tributary Rivers; and also the Russian River Watershed

When Used: Permits of 1 cfs or more or 100 afa of storage or more within: the Sacramento, Cosumnes, Mokelumne, or Calaveras River Basins or the Sacramento - San Joaquin Delta, and the Russian River Watershed; and any size permit in the San Joaquin River Basin below Friant Dam, when hydraulic continuity with the Delta exists, or is likely to exist, during the requested diversion season.

Term:
The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the SWRCB concerning availability of water and the protection of beneficial uses of water in the **. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

** Sacramento-San Joaquin Delta and San Francisco Bay or
** Russian River

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21176

Application 30531A of

City of Stockton
c/o Department of Municipal Utilities
2500 Navy Drive
Stockton, CA 95206-1191

filed on April 18, 1996, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:
San Joaquin River

Tributary to:
Sacramento-San Joaquin Delta

within the County of San Joaquin

2. Location of point of diversion

By California Coordinate System of 1927 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
POD #1: N563,400 - E1,713,150	NE¼ of NE¼	11	2N	4E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Portions of C.M. Weber Grant with Place of Use boundaries and Township and Range
Municipal and Industrial	Portions of:	2, 12, 24, 36, 25	2N	5E	MD	None
	All of:	1 [§]	2N	5E	MD	
	Portions of:	1, 12	1N	5E	MD	None
	Portions of:	7, 13, 18, 21, 22, 23, 33	2N	6E	MD	All
	All of:	1-6, 8-12, 14-17, 19, 20, 29-32	2N	6E	MD	
	Portions of:	4, 15, 18, 27, 34, 21, 28, 33	1N	6E	MD	All
	All of:	5-9, 16, 17, 22	1N	6E	MD	
	Portions of:	3, 5, 9, 10	1S	6E	MD	All except portions of sections G and 3
	All of:	4	1S	6E	MD	
	Portions of:	4, 8, 9, 17, 18	2N	7E	MD	All except portions of sections 81-86, H, M, 93 and 94
	All of:	5, 6, 7	2N	7E	MD	
	Portions of:	1, 11, 12, 25, 26	1N	7E	MD	All except portions of sections M, 86, 93, and 94
	All of:	13, 14, 23, 24, 27, 28, 33, 34	1N	7E	MD	
	Portions of:	3, 4, 5, 8, 9, 10	1S	7E	MD	All except portions of sections O and 27
	All of:	None	1S	7E	MD	
Total area within Place of Use = 81,441 acres						

The place of use is shown on map dated October 27, 1997 filed with the State Water Board.

Permit 21176

5. The water appropriated shall be limited to the quantity, which can be beneficially used, and shall not exceed 317 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 33,600 acre-feet per year. (000005A)
6. Construction work of Delta Water Supply Project facilities developed under this permit: (a) the point of diversion (water intake site), (b) the raw water and treated water transmission pipelines, and (c) the 30 million gallon per day water treatment facility, shall be prosecuted with reasonable diligence and completed by December 31, 2015. Complete application of the water to the authorized uses under this permit shall be completed by December 31, 2020. (0000009)
7. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
8. Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued. (0000010)
9. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
10. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges, which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.
(0000013)
12. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.
(0000014)
13. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Resources Control Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.
(0000015)
14. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.
(0000063)
15. Permittee shall comply with the following conditions that are derived from the agreements and stipulations between permittee and the California Department of Water Resources, the United States Bureau of Reclamation, the San Joaquin River Group Authority, dated November 22, 2004, November 29, 2004, September 27, 2005, respectively, and filed with the State Water Resources Control Board:
 - a. In order to ensure compliance with Water Code section 1485, the permittee shall conduct its diversions as follows:
 1. The permittee shall maintain records of (a) daily diversion of water from the Delta at its Delta Diversion Facility and (b) daily discharge of effluent to the Delta at its Regional Wastewater Control Facility.
 2. The 15-day running average of diversions from the Delta under this permit shall be less than or equal to the 15-day running average of discharges of properly treated effluent discharged from the Regional Wastewater Control Facility into the San Joaquin River. The term "properly treated effluent" means effluent that meets the requirements of the Central Valley Regional Water Quality Control Board.
 3. The permittee shall maintain weekly summary records of diversions, discharges and computations specified in paragraphs 15a.1 and 15a.2.

4. The permittee shall post on the World Wide Web (WWW) Internet for public monitoring purposes, within five (5) days of the diversion or discharge, the daily total amount of water in acre-feet diverted from the Delta at the permittee's diversion facility, the daily total amount of water in acre-feet of properly treated effluent discharged into the San Joaquin River from the permittee's Regional Wastewater Control Facility, and the weekly summary records specified in paragraph 15a.3.

Inclusion in this permit of certain provisions of the referenced agreements shall not be construed as disapproval of other provisions of the agreements or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

16. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Resources Control Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

17. No water shall be used under this permit until permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Central Valley Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No point source discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to ground water without issuance of a waste discharge requirement may be allowed if, after filing the report pursuant to Section 13260:

- (1) the Regional Board issues a waiver pursuant to Section 13269, or
- (2) the Regional Board fails to act within 120 days of the filing of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to ground water of water resulting from the irrigation of crops.

(0290101)

18. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, designed to meet the California Department of Fish and Game (CDFG) and the National Marine Fisheries Service (NMFS) screening criteria to protect all life history stages of emigrating juvenile Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*Oncorhynchus mykiss*) and Delta smelt (*Hypomesus transpacificus*). The screen will meet the following specifications:

- The screen will be oriented such that flow past the screen will be parallel to river flow.
- The screen will be designed so that a maximum uniform approach velocity of 0.2 feet per second as well as an adjustment for flow patterns will be provided across the face of the screen.

- The screen will be fitted with an automatic rotating brush or hydraulic screen cleaner that cleans the entire fish screen once every five minutes, while the diversion is in operation. Except during periods of tidal flow reversal, sweeping flow velocity will be at least twice the approach velocity.
- Screen openings will not exceed 1.75 millimeters with a minimum opening of 27 percent based on the salmonid fry criterion.
- The screen will be made of rigid, corrosion-resistant material with no sharp edges or projections (stainless-steel or copper-nickel alloy using wedge wire.)

(0000214)

19. No water shall be diverted until permittee has completed a monitoring and response plan for larval delta smelt (*Hypomesus transpacificus*). Monitoring for larval delta smelt will be conducted annually between February 15 and July 31 to detect the presence of larval delta smelt and trigger the implementation of the response plan, if necessary. The densities and geographic distribution of smelt will be used to identify those periods when larval delta smelt are not in the area and no operational changes are necessary. An annual monitoring and response report will be submitted to the Chief, Division of Water Rights by September 15.

Permittee shall submit the monitoring and response plan to the CDFG, NMFS and United States Fish and Wildlife Service (USFWS) for review. Permittee shall submit evidence of the review and the completed response plan to the Chief, Division of Water Rights.

In consultation with CDFG, permittee shall complete a census of larval delta smelt to determine the effectiveness of the response plan. If the response plan measures are not effective in protecting larval smelt from entrainment, permittee shall identify and develop alternative measures in cooperation with USFWS and CDFG. Permittee shall submit evidence of the effectiveness of the response plan or the alternative measures to the Chief, Division of Water Rights. Permittee shall be responsible for the construction, operation, and maintenance of the required facility.

Permittee shall mitigate for the impacts of the project to special-status species identified in the FEIR. Permittee may either submit to the Chief, Division of Water Rights, evidence that the Project is approved for participation in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and comply with the requirements under that program, or permittee may obtain the necessary individual permits from the appropriate regulatory agency (CDFG or USFWS). Evidence of regulatory agency review will be submitted to the Chief, Division of Water Rights.

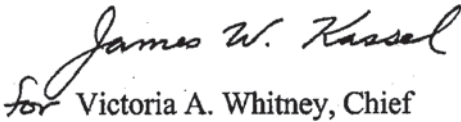
This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 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 (of the Water Code), but no longer.

Section 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 that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 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 therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), 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 (of the Water Code) 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 (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD



for Victoria A. Whitney, Chief
Division of Water Rights

Dated: **DEC 20 2005**

**SACRAMENTO COUNTY WATER AGENCY
CALIFORNIA**

For the Agenda of:
October 21, 2008
Timed: 2:15 p.m.

To: Board of Supervisors
Board of Directors, Sacramento County Water Agency

From: Department of Water Resources

Subject: Adopt Resolutions Approving The Sacramento County And Sacramento County Water Agency Policies With Respect To Bay-Delta Activities Including The Delta Vision And The Bay-Delta Conservation Plan

Supervisorial
District(s): Nottoli

Contact: Keith DeVore, Director, 874-8651

Overview

Staff is asking both Boards to approve policies in response to the Delta Vision, Strategic Plan, and Bay-Delta Conservation Plan (BDCP) recommendations and proposals. These plans collectively propose the formation of an overarching appointed governmental structure to implement the stated co-equal goals of providing a reliable water supply for California while sustaining a healthy San Francisco Bay/Sacramento-San Joaquin Delta (Delta) ecosystem. The plan recommendations also include constructing large channels to convey water south and creating vast wetlands from agricultural farmlands. As currently proposed, these recommendations will have adverse financial impacts and result in the diminution of the Board's governance authority. They will also create the potential for: (1) the loss of water rights, (2) unmitigated environmental impacts, and (3) adverse effects on the operations of the Sacramento Regional County Sanitation District (SRCSD) and the Freeport Regional Water Project (FRWP).

Recommendations

1. The Board of Supervisors adopt the attached County of Sacramento Resolution approving Sacramento County policies with respect to Bay-Delta activities including the Delta Vision and the Bay-Delta Conservation Plan; and
2. The Sacramento County Water Agency (SCWA) Board of Directors adopt the attached SCWA Resolution approving the Sacramento County policies with respect to Bay-Delta activities including the Delta Vision and the BDCP.

Measures/Evaluation

Not applicable to this agenda item.

Fiscal Impact

The potential fiscal impact is incalculable at this time, but land use policies, improvement plans, and changes to water rights which may result from current proposals will adversely affect the economic development in the impact areas of the Delta and the County generally. This request is consistent with applicable elements of the 11-Point Budget Plan.

BACKGROUND

The Delta is a massive estuary at the confluence of the Sacramento and San Joaquin rivers. Numerous islands exist in the Delta, which have been rich agricultural lands since the conversion to irrigated agriculture that occurred at the conclusion of the California gold rush. These islands and waterways provide habitat for many species of plants and animals, including several listed as either threatened or endangered under the state and federal endangered species acts.

The Delta is the source of irrigation water for approximately seven million acres of agricultural land and a source of municipal and industrial water supply for two-thirds of California's residents. The Delta is the key conveyance point for California's two largest water projects, the Central Valley Project (CVP) and the State Water Project (SWP). The CVP and SWP operate massive pumps that transport water from the Delta to Central and Southern California.

For decades the Delta has been in decline. Delta water quality is getting poorer. Delta islands are subsiding faster than any place on earth. Several fish species have experienced recent and dramatic population declines. Delta levees are deteriorating and have failed during storm events over the past few years.

These conditions have prompted contentious battles in administrative, legislative and judicial proceedings. Conflicts have arisen between water users within the Delta and those who use water exported from the Delta. Environmentalists have sued water users, including the state and federal governments. Some of the most protracted conflicts have occurred in the context of the administrative proceedings (and subsequent litigation) for the Delta water quality control plan, which is essentially the water quality framework established pursuant to the federal Clean Water Act and California's Port-Cologne Act. In fact, the Delta water quality control plan has been the source of active and unabated administrative or judicial proceedings since the mid-1970s.

Governor Schwarzenegger created the Delta Task Force by executive order in September 2006 and charged it with developing "a durable vision for sustainable management for the Delta." His executive order recognized that "a concerted, coordinated and creative response from leaders at all levels of government, stakeholders, academia and affected communities" will be necessary to increase the Delta's sustainability.

In December 2007, the Delta Task Force released its final Delta Vision, setting forth 12 integrated and linked recommendations for long-term management and suggesting several near-term actions to address immediate needs. The Delta Vision rested on the premise that "[t]he Delta is critically important to California but cannot be sustained as we know and use it today." The 12 recommendations encompassed conveyance (preferring a dual conveyance solution) but were meant to address comprehensively the "[w]ater, land use, environmental and institutional elements necessary to a desirable solution."

On June 18, 2008, the Delta Vision Blue Ribbon Task Force (Delta Task Force) released a preliminary staff draft of the "Delta Vision Strategic Plan" (Draft Strategic Plan/Strategic Plan). Once finalized, the Strategic Plan will be the first planning document produced by the Delta Task Force. Although very much a rough draft "not for attribution," as the running header states, the

Draft Strategic Plan provides an interesting look at the solutions and approaches being considered by the Delta Task Force. At its heart are the co-equal goals of the Delta Vision – the San Francisco Bay/Sacramento-San Joaquin Delta (Delta) ecosystem and a reliable water supply – and it outlines a number of dramatic shifts in California’s approach to the Delta that are necessary to achieve these goals.

Current investigations and studies with respect to the Delta have made clear that there is no one cause of the Delta’s decline. Numerous probable causes for that decline have been identified including the impact of the export pumps, the introduction of invasive species into Delta waterways, the impact of unscreened Delta diversions and the introduction into Delta waters of industrial and other contaminants. In addition, ocean conditions have also contributed to the decline of Delta species. As the Delta Vision and other processes proceed to work on solutions to identified problems in the Delta, actions and activities must recognize the multiple factors that are in play and not assume that the Delta’s problems can be properly addressed without addressing all of the causes of this decline.

Draft Strategic Plan

The Delta Task Force’s next step is to draft a strategic implementation plan by October 31, 2008. The Draft Strategic Plan builds on the Delta Vision’s 12 recommendations, but highlights two assumptions it calls “especially central”:

1. The Delta ecosystem and a reliable water supply for California are the primary, co-equal goals for sustainable management of the Delta.
2. The California Delta is a unique and valuable area, warranting recognition and special legal status from the State of California.

The Delta Task Force sets forth two “fundamental” conclusions at the outset of the Draft Strategic Plan. The first is that California must “greatly improve” both its decision-making abilities and its capacity to implement decisions concerning the Delta ecosystem and water reliability. The second is that even if a revitalized ecosystem and sustainable water supply are achieved, they will not guarantee a return to “water export levels of the recent past or survival of any individual species.” The Draft Strategic Plan examines cost estimates from a number of sources and concludes that the total capital expenditure for the Delta in the next 15 years, including the cost of an alternative conveyance and Delta improvements, could range from \$12 to \$24 billion and go as high as \$80 billion.

The Draft Strategic Plan is comprised of four sections: (1) Governance and Finance, (2) Ecosystem, (3) Water Supply Reliability, and (4) The Delta as a Place. Each section addresses goals, potential metrics, and implementation strategies.

Governance and Finance

Goals identified in the Draft Strategic Plan include creating “clear lines of governmental responsibility for protecting” the Delta, harmonizing the work and roles of existing agencies, and obtaining financing. These may be measured by the successes and failures of the other sections

of the Draft Strategic Plan. A “multi-part governance structure” is recommended, including: “a California Delta Ecosystem and Water Council, a strengthened Delta Protection Commission, a Delta Conservancy, and a Delta Science and Engineering Board.” The new Council would develop and implement a binding California Delta Ecosystem and Water Plan.

Ecosystem

Ecosystem goals include supporting viable populations of Delta species, creating migration corridors, and reducing ecosystem stressors. Measurements may include the acreage and connectivity of certain habitats and the abundance and distribution of various species. This is to be accomplished by restoring habitats and ecosystem processes, monitoring wildlife, and controlling stressors.

Water Supply Reliability

The goals in this section are to improve reliability; to enhance supply, quality and flexibility of water resources; to balance water supply and ecosystem; and to prepare for climate change. Measurements are to include water use, adequacy of emergency reserves, concentrations of contaminants in Delta water, and other factors. The strategies for achieving these goals include improving data collection, increasing urban and agricultural water-use efficiency, requiring developers to incorporate water-savings devices and mitigation measures, increasing locally generated water supplies, encouraging use of recycled water, improving the legal and regulatory framework for transfers and storage, and exploring dual-conveyance options.

The Delta as a Place

Finally, these goals include enhancing tourism and recreation, decreasing the risk of flood damage, and harmonizing state and local priorities. They may be measured in part by flood risk and the acreage of desirable land uses. The Draft Strategic Plan discusses the possibility of creating a National Heritage Area and State Recreation Area and enhancing “gateway” locations in order to draw attention to the Delta, taking flood-prevention steps, revitalizing the levee system, and creating emergency plans.

DISCUSSION

Agencies that provide water supplies to areas south of the Delta, along with various state and federal agencies and other stakeholders, are in the process of developing a habitat conservation plan (HCP), or the BDCP, for the Delta that will address species that are listed as threatened or endangered under the state and federal endangered species acts.

The State Water Resources Control Board (SWRCB) intends to review both water rights and water quality issues associated with the Delta.

The Legislature, encouraged by the Governor and Senator Diane Feinstein, has pursued bond legislation that would finance infrastructure that will be necessary to address water supply problems within the State, as well as Delta ecosystem improvements.

Adopt Resolutions Approving The Sacramento County And Sacramento County Water Agency Policies With Respect To Bay-Delta Activities Including The Delta Vision And The Bay-Delta Conservation Plan

Page 5

All of these various processes overlap with improved conveyance of water through and/or around the Delta and Delta ecosystem with restoration and enhancement the key focus.

Significant portions of Sacramento County are within the Delta; and therefore, the County's interests are directly implicated in all of these processes. In addressing environmental problems and concerns in the Delta and in addressing the need to more efficiently convey water to areas south of the Delta, the potential exists to directly and adversely affect areas of Sacramento County that lie both within and outside of the Delta.

While Sacramento County is and has been willing to constructively participate in all of the processes noted above, it should be guided by the following policies and principles:

1. No Redirected Adverse Impacts. The Delta Vision's twelve integrated recommendations have been developed around what it terms the co-equal goals of the Delta ecosystem and a reliable water supply for California. These co-equal goals, in the context of their practical application, ignore the reality that the adverse impacts of diversions in the Delta are primarily a result of water exports and that water supply issues above the Delta are quite different from those that are presented in areas of the State that are south of the Delta. While addressing the Delta ecosystem and providing a reliable water supply for those south of the Delta are important, actions and activities associated with the Delta should not be undertaken at the expense of those upstream of the Delta.

As a consequence, Sacramento County can only support actions associated with the Delta ecosystem and water supply reliability for areas south of the Delta that do not result in significant adverse environmental, economic, or social impacts to counties or the watersheds of origin of Delta waters, including Sacramento County.

2. Water Rights and Area-of-Origin Protections. The major resource focus of the Delta Vision and BDCP is water. Water is needed for the Delta ecosystem and for export south of the Delta. The proposed peripheral canal is championed based upon its ability to isolate the SWP and CVP pumps from the Delta ecosystem, as well as its ability to more efficiently convey water to areas south of the Delta. The Delta Vision advocates the reallocation of water to these purposes, notwithstanding priority of water rights or the promises of area-of-origin protections that were a predicate for the authorization of the SWP and CVP and the grant of water rights to those projects. The Delta Vision does so based upon a series of legal opinions related to the public trust doctrine and the reasonable use doctrine. Neither of these doctrines, however, needs to be applied, as has been suggested in the Delta Vision.

Sacramento County will not support any action or activity that ignores water rights priorities and the protections afforded counties and areas of origin. A bedrock policy principle that will guide actions with respect to the Delta is that in undertaking actions and activities associated with the Delta protections, county and area-of-origin assurances and protections, as well as water rights priorities, must be honored. Sacramento County believes that water solutions like those encompassed in the agreement reached among water rights holders in the Sacramento Valley, the negotiated agreement on the Yuba

Adopt Resolutions Approving The Sacramento County And Sacramento County Water Agency Policies With Respect To Bay-Delta Activities Including The Delta Vision And The Bay-Delta Conservation Plan

Page 6

River, the Sacramento Water Forum Agreement, and the free market transfer of water all present better models than does the adversarial reallocation of water advocated by the Delta Vision.

Sacramento County also opposes water user fees that seek to tax water users within the areas of origin to mitigate for environmental harm caused by those south of the Delta or to pay for the costs of conveyance or increased water supply for those south of the Delta.

3. The Peripheral Canal. All of the various processes related to the Delta at some level appear to recommend a peripheral canal to isolate the Delta from the adverse effects of the SWP and CVP pumps. This may be an appropriate solution for the problems that plague the Delta. However, this facility, particularly its proposed eastern alignment, raises major significant and unique issues and concerns for Sacramento County. A copy of these different conveyance alternatives is included as Attachment 1. These include the concerns addressed in Policies 1 and 2 above, but also include the following:
 - A. Discharges from the SRCSD facility have been a major “target” of the Delta Vision and the BDCP. This facility should be treated no differently from any other publicly owned treatment works (POTW), and conclusions with respect to its operation should be guided by good science and not by unfounded assumptions or bad information. To the extent that there is a desire to treat discharged water from this facility to a higher degree than would otherwise be required, then costs associated with this extra treatment (capital and operation and maintenance (O&M) costs) should be borne by the State or those who directly benefit from this higher treatment.
 - B. The relative location of the SRCSD facility and FRWP to the intake for an eastern route of a peripheral canal creates the potential for operational conflicts. The peripheral canal should be designed and constructed so that it does not adversely affect the existing or future operation of SRCSD or FRWP facilities, and any increased O&M costs caused by the peripheral canal to SRCSD or FRWP facilities must be borne by the State or those who directly benefit from the peripheral canal.
 - C. An eastern alignment for the peripheral canal will run through Sacramento County. This will have land use and other significant effects on the County. Sacramento County and other local governments must be involved in routing decisions. Full compensation to the County, other local governments, and affected landowners must be made a part of any implementation plan. This includes impacts to habitat, roads, and other infrastructure as well as appropriate mitigation for direct and indirect economic impacts.
4. The actions associated with the Delta have the potential of affecting local County prerogatives, including local land use authority, tax revenues, public health and safety, economic development, and agricultural stability.

Adopt Resolutions Approving The Sacramento County And Sacramento County Water Agency Policies With Respect To Bay-Delta Activities Including The Delta Vision And The Bay-Delta Conservation Plan

Page 7

- A. Local Land Use. The Delta Vision seeks to create a new governance system for the Delta that, at best, marginalizes the traditional role of the County. In its place, Delta Vision recommends the establishment of an appointed governing council. Traditional elected representative governance should not be supplanted by an appointed body; and land use decisions should remain local, even if they are shaped by State-wide concerns.
 - B. Tax, Assessment and Fee Revenues. All of these areas of critical importance will be affected by changing land use patterns in the Delta.
 - C. Public Health and Safety. Public health and safety are primary responsibilities of the County. All proposed activities in the Delta need to be evaluated with respect to their effect on the County's ability to meet its obligations in this regard.
 - D. Economic Development/Agricultural Stability. Existing economic development, including agriculture in the Delta, is of great importance to the County. The County needs to protect the Delta economic sector from interference from out-of-County interests.
5. Related to the above, the Delta Vision and, to a degree, BDCP would supplant local elected governance through the operation of councils, boards, and commissions. A copy of this proposed Governance Structure is included as Attachment 2. To the extent they are established, these councils, boards, and commissions must include voting membership of locally elected representatives, and these locally elected officials must constitute a majority on these regional bodies.
 6. The BDCP consists of interests and stakeholders that are, more or less, limited to south of Delta water export interests or state and federal agencies. This planning effort should not proceed without the participation of directly affected local agencies. Sacramento County will oppose BDCP actions or activities that conflict with the South County HCP. Sacramento County, however, is willing to work with the BDCP to minimize conflict and to maximize mutual interests.
 7. The actions and activities associated with the Delta will include significant expenditures and a great deal of new infrastructure. Adequate dollars need to be allocated and expended to protect and enhance transportation corridors within affected areas of Sacramento County and to maintain and enhance, as appropriate, levees and other means of flood control within Sacramento County. This includes the construction and maintenance of levees that may exist or may need to be constructed to protect legacy communities that may otherwise be stranded if and when water conveyance through the Delta is abandoned in favor of alternative conveyance facilities. The expenditures must also include the cost of improved emergency response within the Delta to expand upon flood protection, particularly for levees downstream of the peripheral canal diversion point.

8. Any solution to the problems being addressed in the Delta must account for the multiple causes of the Delta's decline and not simply focus on one or even a limited number of them. This may make the task of Delta restoration more difficult and costly than more limited actions and activities, but not addressing the multiple stressors affecting the Delta will limit the effectiveness of truly addressing the problem and will place an undue focus burden on less significant problems while ignoring the true causes of the Delta's decline.

FINANCIAL ANALYSIS

The potential fiscal impact is incalculable at this time. The current proposals contain governance proposals, through-Delta conveyance options, and mitigation measures that impact land use policies, levees, improvement plans, and County, SCWA, and SRCSD planning that may affect the economic development or result in unfunded state mandates in the impact areas of the Delta.

Respectfully submitted,

APPROVED:
TERRY SCHUTTEN
County Executive

KEITH DEVORE, Director
Department of Water Resources

By: _____
PAUL J. HAHN, Administrator
Municipal Services Agency

Attachments: Resolution – Sacramento County Policies
Resolution – Sacramento County Water Agency Policies
Attachment 1 – Delta Canal Options
Attachment 2 – First Staff Draft Governance Structure

cc: Robert Ryan, County Counsel
Robert Sherry, Planning
John Woodling, Regional Water Authority

COUNTY OF SACRAMENTO

RESOLUTION NO. _____

**SACRAMENTO COUNTY POLICY POSITIONS WITH RESPECT TO DELTA
ACTIONS AND ACTIVITIES INCLUDING THE DELTA VISION AND THE
BAY-DELTA CONSERVATION PLAN**

WHEREAS, the San Francisco Bay/Sacramento-San Joaquin Delta (Delta) is a massive estuary at the confluence of the Sacramento and San Joaquin rivers in which numerous islands exist that have been rich agricultural lands since the conversion to irrigated agriculture at the conclusion of the California gold rush. These islands and waterways provide habitat for many species of plants and animals, including several listed as either threatened or endangered under the state and federal endangered species acts.

WHEREAS, the Delta is the source of irrigation water for approximately seven million acres of agricultural land and a source of municipal and industrial water supply for two-thirds of California's residents. The Delta is the key conveyance point for California's two largest water projects, the Central Valley Project (CVP) and the State Water Project (SWP). The CVP and SWP operate massive pumps that transport water from the Delta to Central and Southern California.

WHEREAS, for decades the Delta has been in decline, water quality is getting poorer, and the islands are subsiding faster than any place on earth. Several fish species have experienced recent and dramatic population declines. Delta levees are deteriorating and have failed during storm events over the past few years.

WHEREAS, these conditions have prompted contentious battles in numerous administrative, legislative and judicial proceedings between water users within the Delta and those who use water exported from the Delta. Environmentalists have sued water users, including the state and federal governments. Some of the most protracted conflicts have occurred in the context of the administrative proceedings (and subsequent litigation) for the Delta water quality control plan, which is essentially the water quality framework established pursuant to the federal Clean Water Act and California's Port-Cologne Act. The Delta water quality control plan has been the source of active and unabated administrative or judicial proceedings since the mid 1970s.

WHEREAS, the Delta Task Force was created by executive order in September 2006 and charged with developing "a durable vision for sustainable management for the Delta." This executive order recognized that "a concerted, coordinated and creative response from leaders at

all levels of government, stakeholders, academia and affected communities” will be necessary to increase the Delta’s sustainability.

WHEREAS, in December 2007 the Delta Blue Ribbon Task Force (Delta Task Force) released its final “Delta Vision,” setting forth 12 integrated and linked recommendations for long-term management and suggesting several near-term actions to address immediate needs. The Delta Vision rested on the premise that “The Delta is critically important to California but cannot be sustained as we know and use it today.” The 12 recommendations encompassed conveyance (preferring a dual conveyance solution) but were meant to address comprehensively the “Water, land use, environmental and institutional elements necessary to a desirable solution.”

WHEREAS, on June 18, 2008, the Delta Task Force released a preliminary staff draft of the “Delta Vision Strategic Plan” (Draft Strategic Plan/Strategic Plan). Once finalized, the Strategic Plan will be the first planning document produced by the Delta Task Force. The Draft Strategic Plan provides an interesting look at the solutions and approaches being considered by the Delta Task Force; and

WHEREAS, significant portions of Sacramento County are within the Delta; and therefore, the County’s interests are directly implicated in all of these processes. In addressing environmental problems and concerns in the Delta and in addressing the need to more efficiently convey water to areas south of the Delta, the potential exists to directly and adversely affect areas of Sacramento County that lie both within and outside of the Delta. While Sacramento County is and has been willing to constructively participate in all of the processes noted above, it will be guided by the following policies and principles.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Directors of the Sacramento County Water Agency (SCWA) has adopted the following policies with respect to Bay-Delta Activities including the Delta Vision and the Bay-Delta Conservation Plan;

1. Actions associated with the Delta ecosystem and water supply reliability for areas south of the Delta must not redirect unmitigated adverse environmental, economic, or social impacts to Sacramento County.
2. Actions and activities associated with the Delta must honor and adhere to water rights priorities and area-of-origin protections. Sacramento County opposes water user fees that would tax water users in the areas of origin for the cost of mitigation efforts in the Delta or to provide a water supply for those south of the Delta.

3. Water conveyance facilities routed through Sacramento County must have no adverse effect on the existing and future operation of the Sacramento Regional County Sanitation District (SRCSD) facilities or on the Freeport Regional Water Project (FRWP). Other adverse impacts of water conveyance facilities routed through Sacramento County must be fully mitigated. Sacramento County must be fully involved in routing and operational issues of water conveyance facilities located within Sacramento County.
4. Sacramento County will protect its governmental prerogatives in the areas of its local land use authority, tax and related revenues, public health and safety, economic development, and agricultural stability.
5. Sacramento County will protect its ability to govern, as an elected body, from proposed usurpation through governance by a non-elected, appointed board or council. Any councils, commissions, or boards established to “govern” the Delta must include voting membership for elected representatives from Sacramento County, and elected representatives from the Delta counties must be a majority on any of these bodies.
6. Sacramento County will work with the BDCP’s efforts to ensure that it does not conflict with County land use planning, economic development, including agriculture, and that it is consistent and compatible with the South County Habitat Conservation Plan.
7. Financial resources must be committed to maintain and enhance vital transportation and flood control infrastructure within those areas of the Delta that are within Sacramento County. Financial resources also need to be committed to improved emergency response within the Delta; and
8. Any solution to the problems being addressed in the Delta must account for the multiple causes of the Delta’s decline and not simply focus on one or even a limited number of them.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing resolution was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this 21st day of October, 2008, by the following vote, to wit:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

Chair of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk, Board of Supervisors

SACRAMENTO COUNTY WATER AGENCY

RESOLUTION NO. _____

**SACRAMENTO COUNTY WATER AGENCY POLICY POSITIONS WITH
RESPECT TO DELTA ACTIONS AND ACTIVITIES INCLUDING THE DELTA VISION
AND THE BAY-DELTA CONSERVATION PLAN**

WHEREAS, the San Francisco Bay/Sacramento-San Joaquin Delta (Delta) is a massive estuary at the confluence of the Sacramento and San Joaquin rivers in which numerous islands exist that have been rich agricultural lands since the conversion to irrigated agriculture at the conclusion of the California gold rush. These islands and waterways provide habitat for many species of plants and animals, including several listed as either threatened or endangered under the state and federal endangered species acts.

WHEREAS, the Delta is the source of irrigation water for approximately seven million acres of agricultural land and a source of municipal and industrial water supply for two-thirds of California's residents. The Delta is the key conveyance point for California's two largest water projects, the Central Valley Project (CVP) and the State Water Project (SWP). The CVP and SWP operate massive pumps that transport water from the Delta to Central and Southern California.

WHEREAS, for decades the Delta has been in decline, water quality is getting poorer, and the islands are subsiding faster than any place on earth. Several fish species have experienced recent and dramatic population declines. Delta levees are deteriorating and have failed during storm events over the past few years.

WHEREAS, these conditions have prompted contentious battles in numerous administrative, legislative and judicial proceedings between water users within the Delta and those who use water exported from the Delta. Environmentalists have sued water users, including the state and federal governments. Some of the most protracted conflicts have occurred in the context of the administrative proceedings (and subsequent litigation) for the Delta water quality control plan, which is essentially the water quality framework established pursuant to the federal Clean Water Act and California's Port-Cologne Act. The Delta water quality control plan has been the source of active and unabated administrative or judicial proceedings since the mid 1970s.

WHEREAS, the Delta Task Force was created by executive order in September 2006 and charged with developing "a durable vision for sustainable management for the Delta." This executive order recognized that "a concerted, coordinated and creative response from leaders at all

levels of government, stakeholders, academia and affected communities” will be necessary to increase the Delta’s sustainability.

WHEREAS, in December 2007 the Delta Blue Ribbon Task Force (Delta Task Force) released its final “Delta Vision,” setting forth 12 integrated and linked recommendations for long-term management and suggesting several near-term actions to address immediate needs. The Delta Vision rested on the premise that “The Delta is critically important to California but cannot be sustained as we know and use it today.” The 12 recommendations encompassed conveyance (preferring a dual conveyance solution) but were meant to address comprehensively the “Water, land use, environmental and institutional elements necessary to a desirable solution.”

WHEREAS, on June 18, 2008, the Delta Task Force released a preliminary staff draft of the “Delta Vision Strategic Plan” (Draft Strategic Plan/Strategic Plan). Once finalized, the Strategic Plan will be the first planning document produced by the Delta Task Force. The Draft Strategic Plan provides an interesting look at the solutions and approaches being considered by the Delta Task Force; and

WHEREAS, significant portions of Sacramento County are within the Delta; and therefore, the County’s interests are directly implicated in all of these processes. In addressing environmental problems and concerns in the Delta and in addressing the need to more efficiently convey water to areas south of the Delta, the potential exists to directly and adversely affect areas of Sacramento County that lie both within and outside of the Delta. While Sacramento County is and has been willing to constructively participate in all of the processes noted above, it will be guided by the following policies and principles.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Directors of the Sacramento County Water Agency (SCWA) has adopted the following policies with respect to Bay-Delta Activities including the Delta Vision and the Bay-Delta Conservation Plan;

1. Actions associated with the Delta ecosystem and water supply reliability for areas south of the Delta must not redirect unmitigated adverse environmental, economic, or social impacts to Sacramento County.
2. Actions and activities associated with the Delta must honor and adhere to water rights priorities and area-of-origin protections. Sacramento County opposes water user fees that would tax water users in the areas of origin for the cost of mitigation efforts in the Delta or to provide a water supply for those south of the Delta.
3. Water conveyance facilities routed through Sacramento County must have no adverse effect on the existing and future operation of the Sacramento Regional County Sanitation District

(SRCSD) facilities or on the Freeport Regional Water Project (FRWP). Other adverse impacts of water conveyance facilities routed through Sacramento County must be fully mitigated. Sacramento County must be fully involved in routing and operational issues of water conveyance facilities located within Sacramento County.

4. Sacramento County will protect its governmental prerogatives in the areas of its local land use authority, tax and related revenues, public health and safety, economic development, and agricultural stability.
5. Sacramento County will protect its ability to govern, as an elected body, from proposed usurpation through governance by a non-elected, appointed board or council. Any councils, commissions, or boards established to “govern” the Delta must include voting membership for elected representatives from Sacramento County, and elected representatives from the Delta counties must be a majority on any of these bodies.
6. Sacramento County will work with the BDCP’s efforts to ensure that it does not conflict with County land use planning, economic development, including agriculture, and that it is consistent and compatible with the South County Habitat Conservation Plan.
7. Financial resources must be committed to maintain and enhance vital transportation and flood control infrastructure within those areas of the Delta that are within Sacramento County. Financial resources also need to be committed to improved emergency response within the Delta; and
8. Any solution to the problems being addressed in the Delta must account for the multiple causes of the Delta’s decline and not simply focus on one or even a limited number of them.

ON A MOTION by Director _____, and seconded by Director _____, the foregoing resolution was passed and adopted by the Board of Directors of the Sacramento County Water Agency, State of California, this 21st day of October, 2008, by the following vote, to wit:

AYES: Directors,
NOES: Directors,
ABSENT: Directors,
ABSTAIN: Directors,

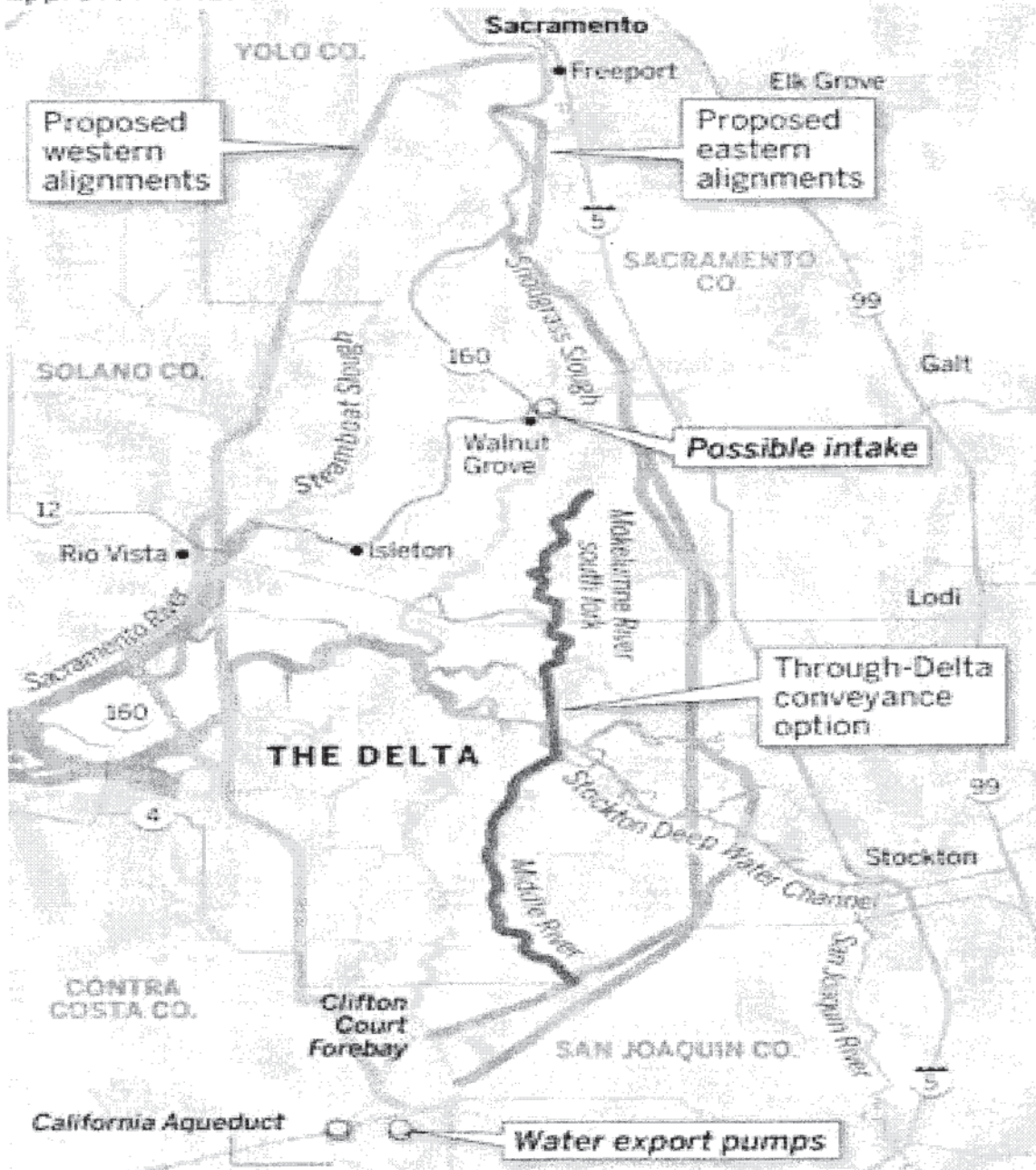
Chair of the Board of Directors of the Sacramento
County Water Agency, a district organized under the
laws of the State of California

(SEAL)

ATTEST: _____
Clerk of the Board of Supervisors of
Sacramento County, California and
Ex officio Secretary of the Board of
Directors of the Sacramento County
Water Agency

DELTA CANAL OPTIONS

This map, based on materials prepared by the state Department of Water Resources, shows preliminary routes proposed for canals designed to move Sacramento River water around or through the Sacramento-San Joaquin River Delta. The project is yet to be approved or funded.



Map data: ESRI, TeleAtlas

Source: Public Policy Institute of California

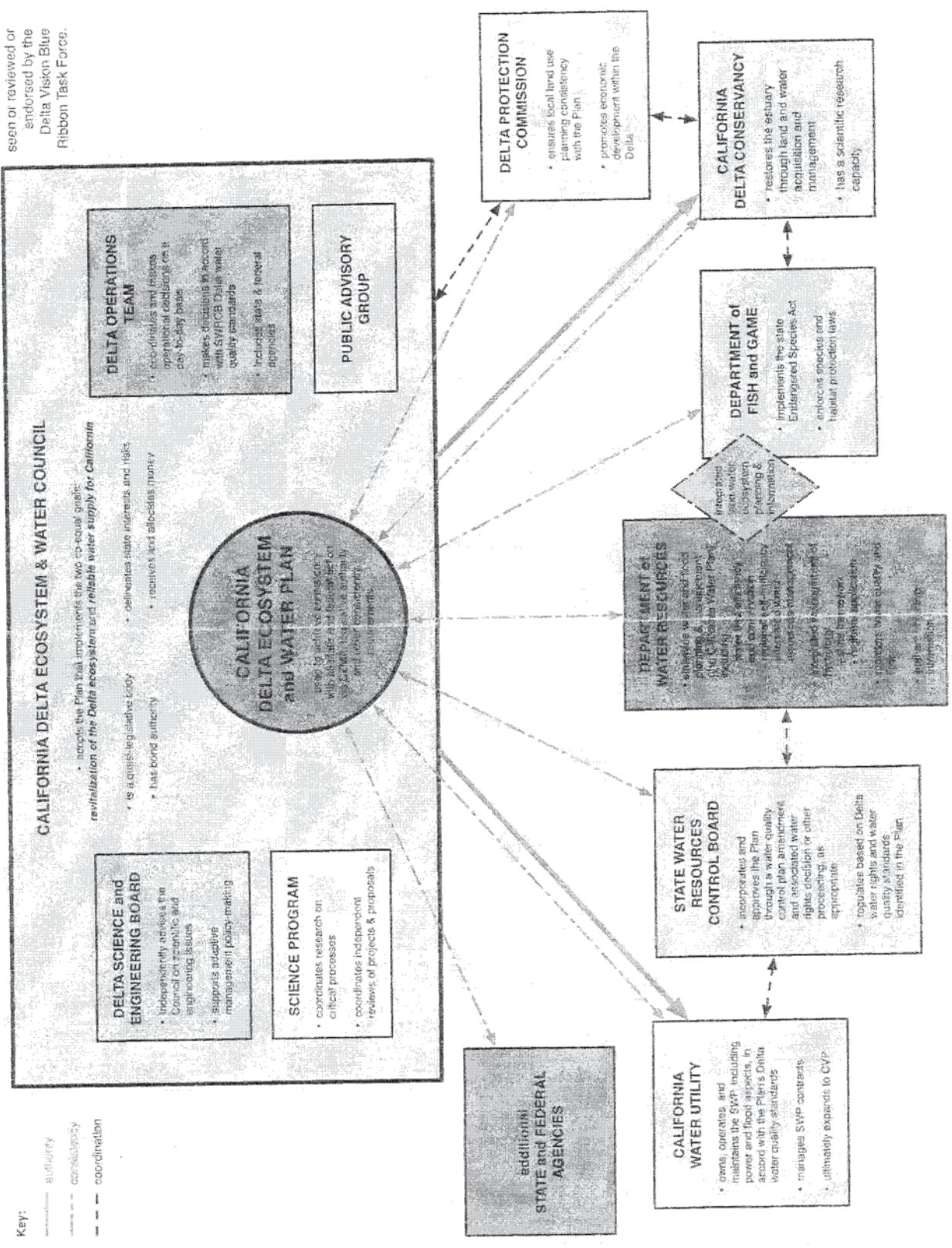
Sacramento Bee

Figure 1

First Staff Draft Governance Structure

The authorities of state and federal agencies described in this figure are limited to Delta Vision-related activities.

This diagram is a draft work product of Delta Vision staff and has not been seen or reviewed or endorsed by the Delta Vision Blue Ribbon Task Force.



SOUTH SACRAMENTO COUNTY AGRICULTURE AND HABITAT LANDS WATER RECYCLING PROJECT

Using recycled water to irrigate agricultural land, create habitats for endangered wildlife, offset groundwater pumping and preserve our drinking water supply.

The logo for the Sacramento Regional Council of Sanitation Districts (SRCS D). It consists of the letters 'S R C S D' in a bold, white, sans-serif font, arranged horizontally within a black, wavy-edged banner.

S R C S D

Sacramento Regional Council
of Sanitation Districts

SACRAMENTO'S ROLE IN IMPROVING STATE WATER SUPPLY PROBLEMS

California continues to be faced with an ongoing water crisis and has been forced to make better use and reuse of its water resources. Sacramento has an important role in that effort. We cannot simply rely on the plentiful water supplies of the past as we move into the future. Recycled water initiatives, along with water conservation, must be increased. Northern California has a long-standing practice of coordination among its numerous water purveyors to integrate water supply planning, but more can and must be done.

SRCSD and Water Recycling

As the region's largest wastewater treatment agency, the Sacramento Regional County Sanitation District (SRCSD) produces a large amount of treated wastewater each day. This water can be safely reused in a number of beneficial ways.

A Proven Track Record

SRCSD has experience in water recycling. SRCSD operates a small-scale water recycling facility that recycles up to four million gallons of water a day for landscape irrigation in the Elk Grove area during the dry, summer months. With additional funding and uses for recycled water, this amount could be greatly increased.

SRCSD has identified specific geographical areas and projects that could make further use of recycled water. One of the most feasible projects is the "South Sacramento County Agriculture and Habitat Lands Water Recycling Project."



Water recycling offers wide ranging benefits to the Sacramento region

Water recycling makes prudent use of limited water supplies and:

- provides a secure, safe and reliable water supply for certain types of landscape and agricultural lands;
- offsets groundwater pumping to allow water levels in aquifers to be preserved;
- helps maintain open space lands and long-term agricultural use;
- Establishes or augments water supply to foraging grounds and habitat for the endangered Swainson's Hawk and other wildlife.

SOUTH SACRAMENTO COUNTY AGRICULTURE AND HABITAT LANDS WATER RECYCLING PROJECT

This project, as envisioned, would send recycled water from the treatment plant through a pipeline to an agricultural area south of Elk Grove and north of the Cosumnes River.

Initially approximately 2,000 acres of agricultural land, producing crops not for human consumption, would be irrigated with recycled water, putting about 10,000 acre feet of water to beneficial use each year. This is roughly equivalent to the

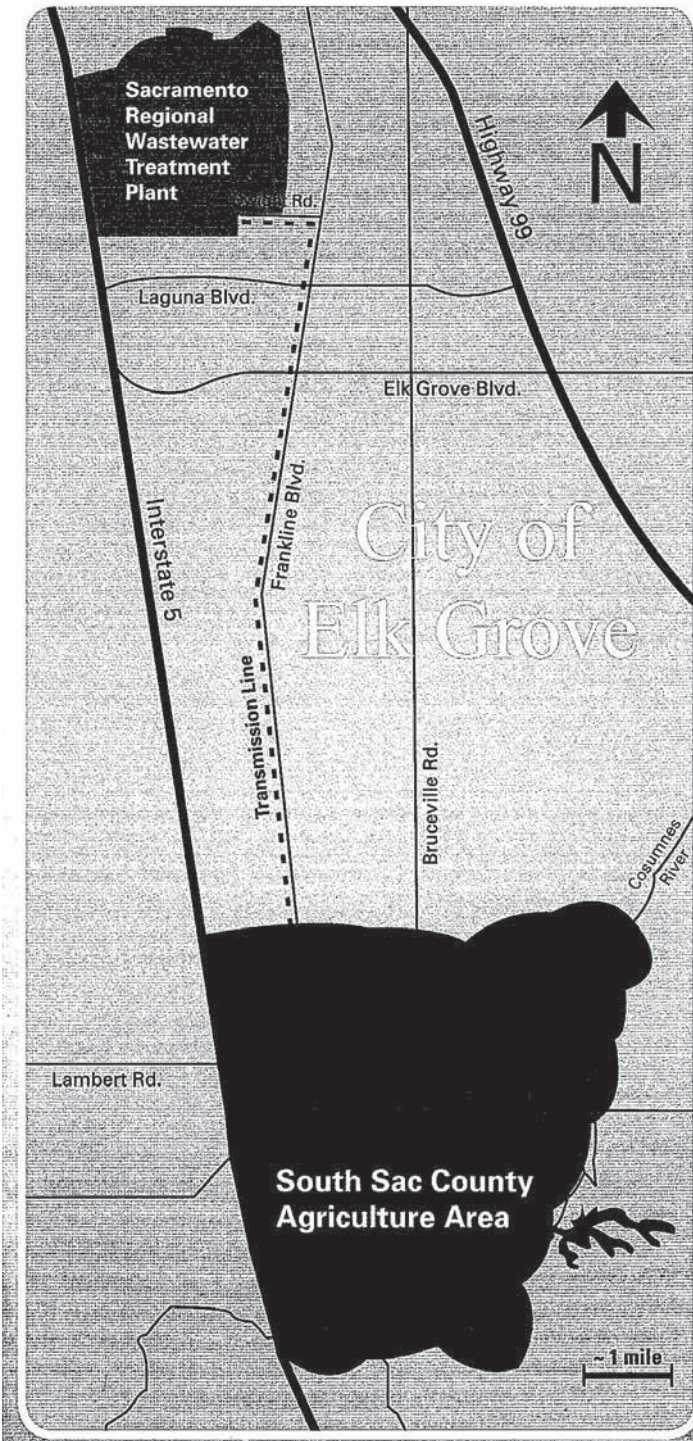
amount of water needed to serve 20,000 homes. Agricultural lands that use recycled water can also create attractive new habitat for species such as the endangered/threatened Swainson's Hawk and such lands might be designated for conservation and mitigation purposes.

During the wet months when irrigation is not needed, water would continue to be treated at the treatment plant and discharged to the Sacramento River.

Cosumnes River Flow Restoration

The Cosumnes is the only remaining free flowing river on the western slope of the Sierra Nevada; unfortunately, the lower part of the river runs dry for portions of the year, preventing the reestablishment of migratory fish species such as salmon and steelhead. It is clearly understood that the decline of the fish populations can be helped by restoring flow and habitat. Recycled water may be able to restore some of the natural flows to the Cosumnes River.

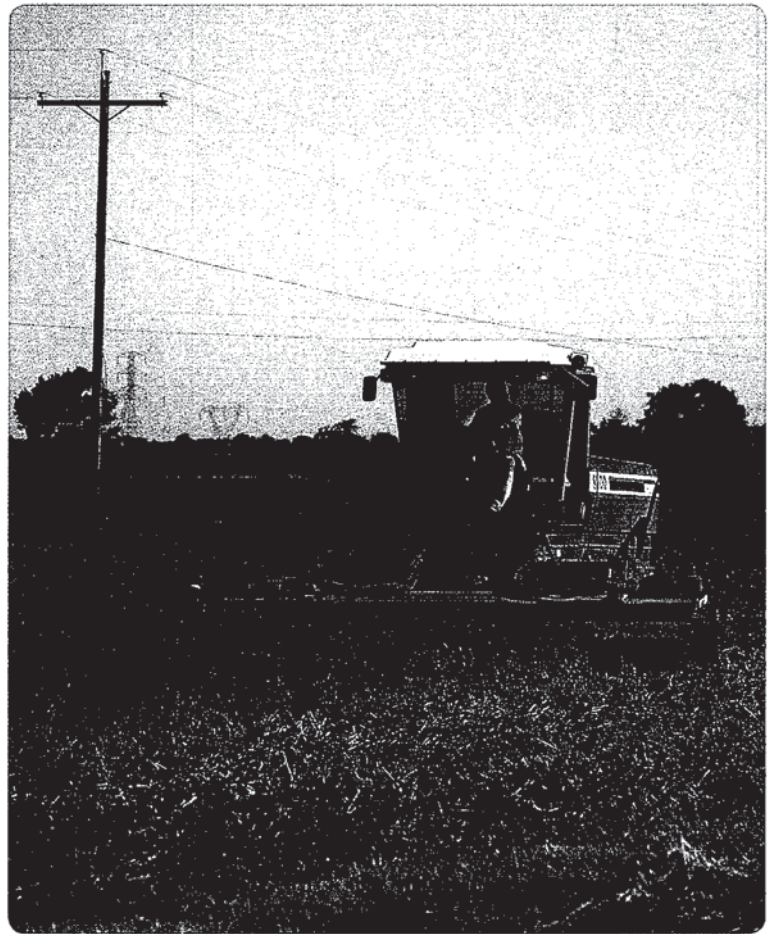
Such a project would also support the Cosumnes River Watershed's rich history. Native Americans first began populating the watershed 4,000 years ago, and it is estimated that at one time approximately 11,000 Miwoks lived in the Cosumnes region. Today, the Miwok people within the Cosumnes River watershed are taking efforts to preserve their history.



GROWING THE PROJECT IN THE FUTURE

There is great potential to increase the amount of water that is recycled and the ways it is used. Following are some possibilities:

- **Expand the Irrigated Area:** There is sufficient agricultural land available to expand the recycling areas. Studies have shown that up to 8,000 acres are feasible.
- **Customize the Level of Treatment:** Facilities could be customized to meet the level of treatment desired for a wide range of applications. These treatment facilities could be located at the Sacramento Regional Wastewater Treatment Plant site. Alternatively, a completely new treatment plant dedicated to recycling could be constructed in the south part of the County.
- **Links with Recycled Water Project in Eastern Sacramento County:** The eastern portion of Sacramento County may need recycled water projects in the future. If so, the entire corridor along the Cosumnes River could be linked with a recycled water distribution system.
- **Groundwater Recharge:** The direct injection of recycled water into the ground to recharge aquifers remains a remote possibility. The regulatory framework for this practice is not fully developed, and in the current setting extremely high levels of treatment would likely be required. However, the practice of using recycled water for irrigation has the indirect effect of offsetting the need for groundwater pumping.



Costs and Critical Funding Needs

Costs for the project are estimated to be between \$116 and \$293 million depending on the project size. Because of the broad project benefits, there is a strong rationale for funding the project from multiple sources. However, at this time, funding has not been secured. Attaining funding is critical to being able to reap the benefits of the opportunity before us.

Improving water supply reliability and efficiency is of interest to the state and nation, particularly in light of the ecosystem decline in the Sacramento-San Joaquin Delta. As an environmental steward, the SRCSD has a keen interest in the environmental benefits from increased terrestrial habitat and possibly aquatic habitat, particularly with restoration of the Cosumnes River. While treating wastewater to levels required for recycling can be a relatively expensive option, SRCSD believes it is important to invest in the future of our water supply now.



KEY QUESTIONS ANSWERED

What is the South Sacramento County Agriculture and Habitat Lands Water Recycling Project?

This project, as envisioned, would send recycled water to an agricultural area south of Elk Grove and north of the Cosumnes River. Recycled water would be used to irrigate agricultural land, create habitats for endangered wildlife, offset groundwater pumping and preserve our drinking water supply.

What is unique about the Project?

The project can be carried out in multiple phases to provide additional benefits and could be potentially expanded to augment Cosumnes River flows and help with much-needed restoration efforts.

Is it safe?

Yes. Water recycling has a long history of safe use in California and the United States. The project will be constructed and operated in accordance with state and federal environmental laws to protect human health and the environment.

Why agricultural, not urban use?

Water recycling in agricultural use is generally less expensive than in an urban setting, largely due to the costs of distribution system facilities. Also, for the proposed phased project there is great synergy with the benefits to agriculture, wildlife habitat, land-use planning, preservation of open spaces as well as preserving water supply. Where opportunities exist for urban use such as parks, recreation and other opportunities would be pursued.

What is the State's Position on Water Recycling?

The State supports water recycling. The California Water Code states that it is a "waste or an unreasonable use" to use potable water for certain purposes such as irrigation when recycled water is available for that use.

California's Recycled Water Policy states:

"We declare our independence from relying on the vagaries of annual precipitation and move towards sustainable management of surface waters and groundwater, together with enhanced water conservation, water reuse and the use of stormwater." Included among goals is the following:

- Increase the use of recycled water over 2002 levels by at least one million acre-feet per year (afy) by 2020 and by at least two million afy by 2030."

Other questions?

Visit www.srcsd.com or contact Terrie Mitchell at (916) 876-6092 for more information.

OUR COMMUNITY SUPPORT

Moving these innovative, environmental projects forward will require a regional effort. A broad coalition of supporters has begun to work together and additional partners are encouraged to join. Continued planning, coordination, education and advocacy need to occur, and the support and efforts of these partner agencies and organizations is key. To that end, the Sacramento Water Recycling Coalition has been formed. Work is being done on stakeholder education, developing principles of agreement, and more.

The following organizations have been working with SRCSD to form the Sacramento Water Recycling Coalition:

The Nature Conservancy
The Sierra Club
Ducks Unlimited
Friends of the Swainson's Hawk
Sacramento Area Creeks Council
Sacramento County Farm Bureau
Sacramento Central Groundwater Authority

League of Women Voters
Sacramento County Water Agency
County of Sacramento
Sacramento County Regional Parks
City of Elk Grove
Southgate Recreation and Park District
Sacramento Area Sewer District

Show your support for this important project.

To learn more, please contact
Terrie Mitchell at (916) 876-6092;
or visit www.srcsd.com



Sacramento Regional County
Sanitation District

Final Report

The Economics of Land Use



Sacramento Regional County Sanitation District Potential Fee Increase Feasibility Analysis

Prepared for:

North State Building Industry Association

Prepared by:

Economic & Planning Systems, Inc.

October 8, 2010

*Economic & Planning Systems, Inc.
2295 Gateway Oaks Drive, Suite 250
Sacramento, CA 95833-4210
916 649 8010 tel
916 649 2070 fax*

*Berkeley
Sacramento
Denver*

www.epsys.com

EPS #20524

1. INTRODUCTION AND EXECUTIVE SUMMARY

The North State Building Industry Association (NSBIA) retained Economic & Planning Systems, Inc., (EPS) to complete an analysis of single-family housing, multifamily housing, and commercial development feasibility because of potential development impact fee increases associated with the cost of implementing the Sacramento Regional County Sanitation District (SRCSD)'s new discharge permit.

This report includes the following items:

- An executive summary briefly describing the analysis framework and feasibility analysis results.
- A summary of the increased development impact fees that might be charged by SRCSD.
- A description of the analysis context and framework, including the development prototypes evaluated and a review of assumptions regarding development projects in SRCSD's service area.
- An overview of the evaluation metrics used in this analysis to assess development feasibility—the infrastructure cost burden (Cost Burden) indicator and residual land value indicator.
- Detailed feasibility results for each development prototype analyzed based on application of the evaluation metrics used in this analysis.

Executive Summary and Analysis Findings

Background

The discharge permit for SRCSD's wastewater treatment facility is up for renewal with the Central Valley Regional Water Control Board (Regional Board). In September 2010, the Regional Board issued a Tentative (Draft) Permit that recommends the Sacramento Region pay approximately \$2 billion for additional treatment processes at the wastewater treatment facility, as shown in **Table 1**.

In preparing this analysis, EPS relied solely on SRCSD's estimate of the cost to build the additional treatment processes and the resulting estimates of monthly service charges and development impact fees necessary to pay for these improvements. SRCSD provided this information in the "Regional Stakeholder Briefing on the SRCSD Tentative Discharge Permit," dated September 14, 2010.

Table 1
Feasibility Analysis of Average SRCSD Fee Increase
Summary of Proposed Fee Increase

Item	Project Costs	Impact Fee
Additional SRCSD Treatment Processes		
Nitrification	\$582,000,000	
Denitrification	\$200,000,000	
Microfiltration	\$1,160,000,000	
UV Disinfection	\$116,000,000	
Total	\$2,058,000,000	
Development Impact Fees		
New Growth		
Existing		\$7,450
Proposed		\$35,000
<i>Percent Change</i>		370%
Infill		
Existing		\$2,800
Proposed		\$13,000
<i>Percent Change</i>		364%

"proposed_fee"

Source: "Regional Stakeholder Briefing of the SRCSD Tentative Discharge Permit" (9/14/10) prepared by Sacramento Regional County Sanitation District (SRCSD) and EPS.

To fund the \$2 billion in treatment processes, SRCSD estimates the additional processing costs require an increase in development impact fees on new development from \$7,450 to \$35,000 on a typical single-family unit, or equivalent dwelling unit (EDU). This represents a 370-percent increase in fees to fund treatment facilities and interceptors. Similar fee increases would affect all other types of land uses.

Existing development would fund a share of the cost of treatment processes through an increase in monthly charges for wastewater treatment. These monthly charges would triple, from \$20 per month to \$61.75 per month.

The analysis presented in this report evaluates the potential effect these SRCSD development impact fee increases will have on new development projects in the SRCSD service area and the Sacramento Region. A separate study prepared by the University of Pacific evaluates the economic impact of the monthly user rate increase on the Sacramento economy but is not included or summarized in this report.

Impact of Increased SRCSD Development Impact Fees on the Sacramento Region

The increase in development impacts fees required to pay for new development's share of the costs of advanced wastewater treatment facilities would essentially render all new residential and nonresidential development infeasible, with the exception of very high-end residential units and warehouse distribution buildings.

This action would have disastrous effects on the Sacramento regional economy. The Sacramento Region is just starting to emerge from the great recession of 2007 through 2010. Because of the significant increased regulation of the home financing industry, new home prices will not regain the levels of 2005. Rather, home prices will be tied to the home owner's ability to pay, resulting in a permanent depressing of home prices back to the 2002 to 2003 prices, with some future adjustments for inflation.

Throughout the region, development impact fees and the total infrastructure burden increased from 2001 through 2007 associated with the rising home prices. As **Table 2** shows, all entry-level to mid-range housing is infeasible with the existing infrastructure burdens.

Cities, counties, and developers have been working over the past few years to reset the infrastructure burdens to feasible levels. Elk Grove, Woodland, Roseville, Folsom, West Sacramento, and Sacramento have all acted to reduce the infrastructure burden on new development in an effort to improve feasibility and encourage development.

The potential SRCSD development fee increase from \$7,540 to an estimated \$35,000 per EDU makes the above fee reduction efforts irrelevant. The \$27,500 fee increase for wastewater treatment is greater than the highest fees in the region for any other single infrastructure improvement. The fee would significantly exceed the fees charged for transportation or schools. On average, the revised SRCSD fee would cause an increase of 30 percent to 40 percent to the current infrastructure burdens. With an increase of this magnitude, for the total Cost Burden to be feasible, fees for other improvements would have to be reduced in many areas mandated by public safety or environmental mitigation requirements, including transportation, water, drainage, schools, and public safety.

The following negative economic and social impacts would result from imposing a fee of this magnitude in SRCSD's service area:

- **Construction of most new buildings will cease in Sacramento County and West Sacramento, causing a substantial negative impact on the region's economy.** Nearly all new housing and nonresidential development would become financially infeasible, causing construction on new projects to cease. This reduction in construction activity would have cascading negative impacts through many industries in the region, including construction, retail associated with products for new homes, banking, title insurance, and all professional services tied to development. The magnitude of this impact on the local economy is already in evidence in the region from the current recession.
- **Monthly wastewater service costs for SRCSD customers will increase substantially more than projected.** In estimating the increased monthly costs for existing customers to pay for the advanced wastewater treatment, SRCSD assumed that 30 percent of the cost would be paid by new development through an increase in SRCSD's development impact fee. Because this fee increase makes new development infeasible, SRCSD would have to increase monthly service charges on existing customers as much as 50 percent higher than projected. Instead of a monthly increase from \$20 to \$61, the increased monthly service cost would likely be around \$80 per user. Instead of a 300-percent increase, the monthly service charge would be nearly a 400-percent increase.
- **Many existing wastewater intensive businesses would close or relocate because of the excessively high wastewater monthly rates.** Monthly service cost increases in the 300-percent to 400-percent range would force many existing business, such as restaurants, food processing companies, bottling companies, and manufacturing companies, to close or relocate outside SRCSD's service areas. These closures would cause significant job losses and the ensuing negative impacts on the economy. There would also be substantial negative impacts on property values in areas where businesses have closed.
- **Regional Land Use Planning, Transportation, and Air Quality Goals will not be met.** The Sacramento Region's Blueprint for growth (Sacramento Blueprint) was approved in 2004. The Sacramento Blueprint heavily relies on a structuring growth in the region focusing on infill development in the City of Sacramento, City of West Sacramento, and commercial corridors in unincorporated Sacramento County. The estimated increase in SRCSD fees makes infill development infeasible. The estimated increase will increase the existing burden per multifamily unit approximately 25 to 50 percent in planned infill locations preventing successful implementation of the region's sustainable growth strategy.
- **Infrastructure costs for new development located outside SRCSD's service area will also substantially increase.** If new development is infeasible in Sacramento County and West Sacramento, then any growth in the region would be forced to outlying areas in El Dorado, Placer, Sutter, Yuba, and Yolo Counties. This shifting of new development to these more outlying areas is inconsistent to the goals defined in the Sacramento Blueprint and related infrastructure requirements. The Sacramento Blueprint targets Sacramento County for much of the growth, and therefore, uses much of the existing transportation infrastructure and requires less new infrastructure. Serving more remote or geographically separated areas (e.g., Yuba County to El Dorado County) will require significantly more expensive infrastructure than the development planned for the region.

- **Local government funding would be substantially reduced.** Cities and counties will have reduced sales tax and property tax revenues because of the losses identified above in taxable sales and property taxes. Local governments are already experiencing major revenue reductions and the associated reduction in public services because of the present recession. The reduced economic activity from the imposition of unrealistically high monthly service costs and development impact fees will exacerbate the funding challenges presently faced by local government.
- **Many local governments could experience defaults on outstanding land secured debt.** Sacramento County and all the cities in SRCSD's service area have funded infrastructure through Mello-Roos Community Facilities District (CFD) bonds initially secured by a special tax on undeveloped land. If new development estimated in these CFDs becomes infeasible, the land owners will stop paying the special taxes, resulting in defaults on the outstanding debt. For example, the City of West Sacramento just issued \$12 million in land secured debt to finance infrastructure in the Bridge District.

The above-listed negative impacts on the Sacramento Region's economy and quality of life are very likely to happen if the estimated SRCSD development fee increase goes into effect. There are many other unintended consequences that will materialize but have not been specifically identified at this time because of the short response time allowed for public response to this issue.

Summary of Feasibility Tests

The analysis evaluated the Cost Burden of single-family residential, multifamily residential, and dine-in restaurant development in several areas served by SRCSD. Each product uses a defined prototype to evaluate the comparative Cost Burden throughout the region. These prototypes reflect product types with the largest amount of demand.

The development feasibility analysis was predicated on the assumption of normalized market conditions—assuming a return to long-term sustainable relations between income levels and home sales prices. The analysis does not focus on the presently depressed market conditions or the unsustainable peak market conditions observed before the current market correction.

Two evaluation metrics were applied to single-family residential development to examine the financial feasibility of development under normalized market conditions:

- The **Infrastructure Cost Burden feasibility indicator test** measures the total costs of backbone infrastructure and public facility improvements as a percentage of the final sales price or finished value of a residential unit. Typically, the maximum Cost Burden a project can bear is 15 to 20 percent of the final home sales price or finished unit value. Of note, development with a Cost Burden at the higher end of the range (i.e., 17 to 20 percent) are only typically feasible coupled with positive trends, such as strong housing markets, financial markets, or job growth.
- The **Residual Land Value feasibility indicator test** offers a more detailed assessment of the entire cost structure of a development project by taking the finished market value of a home and subtracting all costs incurred to achieve that finished value to derive the residual value of the land. The residual land value remaining must be sufficient to fund several

development and entitlement costs beyond land acquisition. A project therefore must typically achieve a minimum residual land value of 10 to 15 percent of the finished home value.

Specific Feasibility Findings by Product Type

As noted earlier, nearly all residential products except at the highest end of the residential market fails these feasibility tests with existing infrastructure burden levels. With the added increase of SRCSD fees, development becomes infeasible regardless of pricing level.

For infill multifamily and restaurant development, this analysis identifies the existing Cost Burdens and determines the relative increase attributable to an increased SRCSD development impact fee. The feasibility of these product types are often constrained by demand. That is, when residential demand is great, infill multifamily development is "more feasible," or when retail growth is high, contract rents are high and restaurant development is "more feasible."

Currently, many local jurisdictions and the building community are working to reduce infrastructure cost burdens to help make all development projects feasible. The size of the estimated SRCSD fee increase will essentially put a stop to all efforts to bring fees in line with accepted feasibility levels.

Below is a list of major analysis findings by product type.

Single-Family Residential

The single-family prototype was defined as a 2,200-square-foot home with a density of five units to the acre. The relative Cost Burdens were analyzed in Elk Grove, Folsom, Rancho Cordova, Sacramento, West Sacramento, and unincorporated Sacramento County.

This development prototype represents homes targeted to middle- to upper middle-income home buyers that represent the majority of potential home buyers in the Sacramento Region. The analysis does not evaluate the narrower portion of the residential market that serves higher income/higher net worth households (i.e., "equity immigrants"). If the greatest proportion of the housing market represented by middle- to upper middle-income buyers is infeasible, then the consequences noted in this document will occur whether or not the upper income market is feasible.

The analysis found that the most feasible area for development is located in unincorporated Sacramento County: the Vineyard Spring Specific Plan Area (Vineyard Springs). Therefore, Vineyard Springs was selected as the reference market to further analyze feasibility of the more rigorous residual land value test for single-family prototypes varying by size and density. By default, if the SRCSD fee increases in Vineyard Springs are infeasible, then the finding would hold true for all other areas.

Table 2 summarizes the feasibility analysis results for the single-family residential development prototype using the two evaluation metrics described above: (I.) Infrastructure Cost Burden Test, and (II.) Residual Land Value Test. The table shows the relative feasibility of single-family residential development (a) with the existing infrastructure burden, and (b) with the increased SRCSD development impact fee estimated to fund the advanced wastewater treatment facilities.

Here are the major findings:

1. Existing Cost Burdens for single-family development exceeds feasible ranges.

For most development areas, Cost Burdens are marginally beyond the range typically considered feasible. Further, this finding is consistent in all areas of the region with several areas remaining feasible, such as Vineyard Springs. These areas may benefit from small downward adjustment to the total costs. Many regional cities continue to look for ways to reduce total cost burdens to improve feasibility and encourage development.

2. The estimated increase in SRCSD development fees makes single-family development infeasible at all price points.

Further analysis of potential development of Vineyard Springs indicates the estimated SRCSD development fee increase makes all product prototypes infeasible, regardless of pricing level. The SRCSD fee increase represents an approximately 30- to 40-percent increase in total costs. The adjustments needed to reach levels of feasibility are unlikely to be achieved with the additional burden of increased SRCSD development fees.

3. Residual land values for residential developments are below acceptable ranges.

Taking into consideration other development cost factors, all development prototypes evaluated in this analysis remain infeasible as indicated by residual land value results. While Cost Burdens contribute to these results, other cost factors, such as on-site infrastructure and limitations on achievable project densities, also influence the residual land values. Adjustments to infrastructure costs and other unit development cost factors are necessary to achieve development feasibility in Sacramento. The level of adjustments necessary in these categories would not be possible with the increased SRCSD fee.

Multifamily Infill Development

The prototype infill multifamily product was a high-density apartment-styled product with a density of 40 units per acre. This prototype was evaluated for the redevelopment areas located in the Cities of Sacramento and West Sacramento. Here is the major finding:

1. The estimated increase in SRCSD development fees substantially increases the cost burdens of new infill residential projects.

The significant SRCSD fee increases would likely render infill multifamily development projects infeasible in Sacramento County. The fee increase represents an approximately 30- to 40-percent increase in total costs.

Dine-In Restaurant Development

The prototype dine-in restaurant was a 5,500-square-foot restaurant. This restaurant prototype was evaluated in many of the growth areas of the region, including the Cities of Sacramento, Rancho Cordova, Folsom, Elk Grove, and West Sacramento, and in unincorporated Sacramento County. Here is the major finding:

1. Cost Burdens and Annual Operating Cost Increases would make new restaurant projects infeasible.

The significant SRCSD fee increases would likely render restaurant development projects infeasible in Sacramento County. The increased SRCSD fee increases the overall Cost Burden 32 to 66 percent. Although not specifically analyzed, all other nonresidential land uses would likely be infeasible, with the possible exception of warehouse distribution space, which has very low wastewater demand and therefore low fees.



EBERHARDT SCHOOL OF BUSINESS

**Business Forecasting
Center**

**Assessing the Impact of the Tentative Discharge Permit for the
Sacramento Regional Wastewater Treatment Plant on Sacramento
Area Income and Employment**

November 10, 2010

Dr. Jeffrey Michael and Dr. Thomas Pogue

Business Forecasting Center

Eberhardt School of Business

University of the Pacific

3601 Pacific Avenue

Stockton, CA 95211

<http://forecast.pacific.edu>

We thank the Sacramento Regional County Sanitation District (SRCSD) for data and their assistance in understanding the technical and financial details of the advanced treatment process and their operations, and for financial support of this project.

Executive Summary

Ecological problems in the Sacramento-San Joaquin Delta have raised concerns about the discharge from the Sacramento Regional County Sanitation District (SRCSD) wastewater treatment plant that serves most of Sacramento County and West Sacramento in Yolo County. The Central Valley Regional Water Quality Control Board recently released a Tentative NPDES Discharge Permit that would require over \$2 billion in upgrades to the Sacramento Regional Wastewater Treatment Plant. This report evaluates the economic costs to the Sacramento region of complying with tentative permit. All costs and economic impacts in this report are measured in 2009 dollars.

The project would require nitrification, denitrification, microfiltration, and UV disinfection. The capital cost is estimated at \$2.083 billion, and operation and maintenance of the completed facility is estimated at \$77 million per year. We project that the project will require SRCSD to generate an additional \$239 million annually through increased rates and fees. SRCSD is projecting even higher rate increases, because they anticipate larger debt coverage requirements to maintain their bond rating and continued slow growth in their service area. The range of potential rate and fee increases is as follows:

- The typical Sacramento household wastewater treatment bill would increase between \$28 and \$42 per month (\$336 to \$504 annually) from their current level of \$20 per month.
- Government, commercial and industrial users would also face proportional wastewater treatment cost increases between 150% and 200%.
- New development wastewater treatment impact fees would increase from \$7,450 to between \$15,000 and \$35,000 per ESD (equivalent single family dwelling). In-fill development impact fees would increase from \$2,800 to between \$6,000 and \$13,000 per ESD.

In addition to higher bills, the total economic impact of the project was assessed by estimating the negative effects of reduced disposable income on consumer spending, the negative effects of reduced construction activity, and the positive effects of building and operating the wastewater plant. Considering all the effects, the average annual economic impacts over the 30 year analysis period on the Sacramento Region are:

- Annual income loss of \$246 million.
- Annual employment loss of 976 jobs.

This is a conservative assessment of regional impacts. SRCSD estimates rate increases will be even larger than our projections. We also assume increased impact fees will only have a small effect on the amount of new development over 30 years, and only reduce the average output of the construction industry by an amount equivalent to the increased fee payments. While the impact on development over 30 years will be relatively small, the effect will be greatest in the near term, pushing back the date at which many development projects become financially feasible for several

¹ This is a separate charge from "local wastewater collection" which Sacramento region users also pay to separate providers of that specific service. One such provider of local wastewater collection in the SRCSD service area is Sacramento Area Sewer District whose monthly rate is \$19.85, which would be additive to the SRCSD rates mentioned above.

years and delaying Sacramento's recovery from the recession.² The report assumes no effect on local electricity costs, although the project will generate a substantial increase in SMUD's electricity demand. We assume increased wastewater treatment rates will not be significant enough to affect the location, operation or investment decisions of businesses, and that lost corporate income flows outside the region. Due to these conservative assumptions, the negative impacts could be larger than we estimate. On the other hand, the negative impacts could be smaller than we estimate if less advanced, lower cost treatment options suggested by Central Valley Regional Water Quality Control Board consultants were developed in more detail and proven to satisfy regulatory requirements as well as the scale and site requirements of the SRCSD plant.

The results of this study inform planning and regulatory decisions regarding the San Joaquin-Sacramento Delta, and can be compared to analysis we have conducted on other aspects of the Delta issue. In a recent analysis conducted in cooperation with UC-Davis researchers, we estimate that reduced agricultural water supplies due to Delta pumping restrictions to protect endangered species result in an income loss of \$72 million and the loss of 1,400 jobs in the San Joaquin Valley.³ We have also estimated that the closure of the salmon fishery in 2008 and 2009 created an annual loss in California of about 1,800 jobs and \$120 million in income.⁴ Our initial analysis of Sacramento wastewater treatment upgrades was limited to nutrient reduction, and we estimated an average loss of 390 jobs and \$94 million in income.⁵ The \$246 million estimate of lost income from the Tentative NPDES Discharge Permit for Sacramento are more than double the loss estimated in these other cases, whereas the job loss is lower since sewer impacts are distributed across hundreds of thousands of households rather than being concentrated on a low-wage industry such as agriculture.

² For an assessment of increased impact fees on the feasibility of proposed developments in the Sacramento areas, see "Sacramento Regional County Sanitation District Potential Fee Increase Feasibility Analysis," Economic and Planning Systems, Inc. October 8, 2010.

³ "A Retrospective Estimate of the Economic Impacts of Reduced Water Supplies to the San Joaquin Valley in 2009," September 28, 2010. http://forecast.pacific.edu/water-jobs/SJV_Rev_Jobs_2009_092810.pdf. In the same report, the UC-Davis agricultural economists estimated the loss as 3,000 jobs and \$112 million in income.

⁴ "Employment Impacts of California Salmon Fishery Closures in 2008 and 2009." April 1, 2010. <http://forecast.pacific.edu/BFC%20salmon%20jobs.pdf>.

⁵ "Advanced Wastewater Treatment for Nutrient Reduction: Impact on Sacramento Income and Employment." August 23, 2010. <http://forecast.pacific.edu/water-jobs/SRCSD%20Treatment%20Final.pdf>

Table of Contents

Executive Summary.....	i
Background.....	1
Cost of Tentative Discharge Permit.....	2
Economic Impact Methodology and Definitions.....	4
Findings on the Increase in Wastewater Treatment Costs.....	5
Findings on the Project’s Facilities Development.....	8
Findings on the Project’s Operations.....	9
Conclusion.....	10
Appendix One: Input-Output Methods.....	121

Figures

Figure 1. Allocation of Increased Wastewater Treatment Cost Components.....	6
Figure 2 Operating Cost Components.....	9

Tables

Table 1 Treatment Cost Losses to Households by Income in Sacramento County.....	6
Table 2 Treatment Cost Employment Effects.....	7
Table 3 Treatment Cost Income Effects.....	7
Table 4 Facilities Employment Effects.....	8
Table 5 Facilities Income Effects.....	8
Table 6 Operations Employment Effects.....	9
Table 7 Operations Income Effects.....	9

Background

The Central Valley Regional Water Quality Control Board released its Tentative NPDES Discharge Permit for the Sacramento Regional Wastewater Treatment Plant on September 3, 2010. The tentative permit requires an advanced microfiltration and UV disinfection process in addition to the total nutrient reduction process we evaluated in an earlier report.⁶ This report updates that earlier analysis to assess the economic impact of the Tentative Permit. All costs and economic impacts in this report are measured in 2009 dollars.

The Sacramento-San Joaquin Delta is in an ecological crisis headlined by dramatic declines in the population of salmon, Delta smelt, and other threatened and endangered fish species. Scientists studying the cause of the ecological decline have identified water pumping operations for the State Water Project and the federal Central Valley Project as a significant contributor to the species decline. Scientists are also exploring other potential causes of species decline, including nutrient discharges, especially ammonia, from the Sacramento Regional County Sanitation District (SRCSD) wastewater treatment plant.

The SRCSD wastewater plant serves most of Sacramento County and West Sacramento in Yolo County. The regional plant began operation in 1982 and provides primary and secondary treatment to the wastewater of over 500,000 households through a pure oxygen activated sludge process. The plant is located in Elk Grove, CA and discharges treated wastewater into the Sacramento River near Freeport. Upgrading the plant to the requirements of the Tentative NPDES Permit requires an investment in microfiltration, UV disinfection, nitrifying trickling filters, fluidized bed reactors, and three new pumping stations (or equivalent technologies) sufficient to process 181 million gallons of wastewater per day. The capital costs alone are estimated at \$2.083 billion and on-going operations and maintenance would add an additional \$77 million per year.

This report evaluates the economic impact on the Sacramento area of investing in the advanced treatment process proposed by the Central Valley Regional Water Quality Control Board. We evaluate the impact on ratepayers' bill, and how higher costs would affect their spending patterns and jobs in Sacramento area businesses. We also estimate the impact of increased impact fees on construction spending. In addition to the costs, we evaluate job and income creation from the construction and operation of the advanced treatment facility.

The report captures most of the likely economic impacts on the Sacramento region, but does have several important limitations. First, we do not estimate the economic value of environmental changes, such as improvements in Delta water quality from advanced wastewater treatment or increased greenhouse gas emissions from greater electricity consumption. Second, the cost estimates and economic impacts are conservative. Rates could increase by more than our conservative projection, and we generally assume that the rate increases will have little impact on the average rate of development over 30 years and business location decisions, and that all lost corporate income flows outside the region and has no multiplier effect on the local economy. We also assume that the project will have no effect on local electricity costs, although it will increase total electricity demand in the Sacramento area by nearly 1%.

⁶ "Advanced Wastewater Treatment for Nutrient Reduction: Impact on Sacramento Income and Employment." August 23, 2010. <http://forecast.pacific.edu/water-jobs/SRCSD%20Treatment%20Final.pdf>

Cost of Tentative Discharge Permit

Cost estimates for the construction and operation of the advanced treatment processes were given to us by SRCSD staff. The project is estimated to cost \$2.083 billion dollars to construct. The microfiltration process has the highest capital cost of \$1.132 billion. The nitrifying trickling filters, fluidized bed reactors and pump stations are estimated to cost \$549 million, \$166 million and \$61 million respectively. Design and construction is expected to take eight years, three years for design and five years for construction. Once the facility is finished, annual operations and maintenance costs are estimated at \$77 million. Annual labor costs are estimated at \$19.8 million, electricity costs of \$24.6 million, supplies and chemicals of \$10.9 million, and \$21.5 million for maintenance and replacement of components.

A consultant review of SRCSD cost estimates prepared for the Central Valley Regional Water Quality Control Board estimates that capital costs could be reduced from \$2.083 billion to \$1.318 billion if mixed media filtration followed by ozonation/peroxide disinfection was used as a substitute for the microfiltration and UV disinfection process proposed by SRCSD.⁷ We are unable to use this lower capital estimate in the analysis, because no operating and maintenance or lifecycle costs were developed in the brief consultants report. Furthermore, SRCSD staff has raised a number of reasons why the less costly and less advanced process is infeasible for the site and scale of their plant, may not satisfy regulatory requirements, and is less effective at reducing other contaminants (e.g. mercury) of concern. Given the absence of operating cost data, unanswered questions about whether the less advanced treatment process would meet regulatory requirements, and the numerous conservative assumptions we utilize to estimate impacts of increased costs throughout the study, we feel the best approach is to analyze the more advanced, microfiltration and UV disinfection processes and utilize the more detailed cost estimates prepared for SRCSD by Carollo Engineers.

The large capital expenditure of over \$2 billion will be financed by issuing revenue bonds. Assuming a 5% interest rate and 30 year amortization period, the project would generate an annual debt service of \$135 million. However, SRCSD will need to increase revenues by more than the amount of new debt service in order to sell the bonds and maintain a strong bond rating. To protect against default risk if revenues or expenses were to unexpectedly change, bond covenants require minimum levels of revenue in relation to debt. For example, the collapse in new Sacramento development during the recession caused SRCSD's revenue from impact fees to decrease by \$40 million per year. Despite the large unexpected drop in revenue, SRCSD was able to make all scheduled payments on existing debt because of cash reserves.

For planning purposes, SRCSD's net operating revenue target is 1.4 times current debt service although the minimum required is 1.2. For the \$135 million in debt service for the full permit-related treatment processes, this amounts to a planning target of an additional \$54 million in needed revenues per year for the required financial coverage, and at least an additional \$27 million in revenue to reach the minimum requirement of revenues at 1.2 times debt service. For the economic impact analysis, we conservatively use the minimum \$27 million level of financial coverage. After adding in the approximately \$77 million in operating and maintenance costs, the full permit-related treatment processes project will require an additional \$239 million in annual revenues from SRCSD customers.

Following current SRCSD capital cost allocation practices, the \$162 million in capital costs will be 70% financed from rate increases to existing customers, and 30% from increased impact fees on new residential

⁷ "Technical Review of Estimated Costs for Proposed Changes to the Sacramento Regional Wastewater Treatment Plant." PG Environmental, LLC. August 18, 2010.

and commercial development. The \$77 million in additional operating and maintenance costs will be entirely paid by rate increases. Thus, the \$239 million in new annual SRCSD revenues is estimated to come from a \$190 million increase in rate revenues, and \$49 million annual increase in impact fee revenue. Current rates generate a little more than \$140 million in revenue, thus the additional \$190 million would require an approximately 140% rate increase, an additional \$28 per month for a single family dwelling. Government, commercial and industrial ratepayers would experience similar proportional rate increases.

The other \$49 million in annual revenue would need to come from impact fees paid by residential and commercial developments. The necessary increase in impact fees is much more difficult to estimate, because it depends on the rate and type of future growth and development rather than a relatively stable base of current ratepayers. Earlier in the decade, SRCSD was adding 10,000 or more ESDs (equivalent single dwellings) per year, but this has dwindled to 2,000 per year during the current recession. We project that population growth will eventually lead to an average of 6,000 to 8,000 new ESDs per year over the 30 year analysis period, and this would require about a doubling of current fees to generate an average of \$49 million in revenue. This is a very rough, and possibly optimistic, estimate to illustrate the possible change to fees. For the purposes of the economic impact analysis, the amount of the total cost burden on new development, \$49 million, is more important than the exact amount of the fees.

SRCSD has made different, more conservative, estimates of anticipated rate and fee increases. We have reviewed their estimates and methodology, and consider their rate estimates to be very plausible, but inappropriate for our economic impact analysis. Their analysis assumes that larger reserves will be needed, and that growth will be very slow to recover and continue to depress their revenues and financial reserves. The rates estimated by SRCSD represent prudent financial planning, especially given the current economic uncertainty and the enormous size of the required bond issue. SRCSD must plan for substantial financial reserves and be financially prepared for more negative scenarios. However, if more positive results are obtained, the financial reserves are an asset that can be used in the future for rate stabilization or paying off debt. Our purpose is different, and the lower rate assessment is more appropriate for an economic impact analysis. We focus narrowly on costs that can be directly attributed to the advanced treatment, and do not include additional rate increases that may be required to rebuild financial reserves depleted by the recession and unrelated cost increases. Below, we present a range of possible rate increases, but we emphasize that SRCSD believes our estimates understate the likely increase in rates that will be required and that the actual rate requirements depend on uncertain factors such as future growth rates.

- The typical Sacramento household wastewater treatment bill would increase between \$28 and \$42 per month (\$336 to \$504 annually) from their current level of \$20 per month.
- Government, commercial and industrial users would also face proportional wastewater treatment cost increases between 150% and 200%.
- New development wastewater treatment impact fees would increase from \$7,450 to between \$15,000 and \$35,000 per ESD (equivalent single family dwelling). In-fill development impact fees would increase from \$2,800 to between \$6,000 and \$13,000 per ESD.

Economic Impact Methodology and Definitions

The economic impact analysis was performed using an input-output (I/O) model. It generated a detailed representation of the Sacramento County economy through which the project's impacts were assessed. In deriving the model we utilized IMPLAN Version 3 software and 2008 county totals data, the most recent data IMPLAN currently has available for Sacramento County. The full range of economic impacts that result from the project, the *Total Impact* is the sum of the direct, indirect, and induced effects:

- *Direct effects* are the changes in income and jobs related exclusively to the project. This includes all construction costs for building the facility (e.g. infrastructure, equipment, labor, etc.). Direct benefits also include annual operating expenditures (e.g. salaries, supplies, maintenance, etc.). Whether payroll related or associated with the purchase of goods and services, all impacts are directly related to the project.
- *Indirect effects* represent the iterative impacts of inter-industry transactions as supplying industries respond to the increased demands from the direct beneficiaries of the project. An example of an indirect benefit would include a chemical company's new employment and increased purchase of feedstock to meet the demand of the expansion project.
- *Induced effects* reflect household consumption expenditures of direct and indirect sector employees. Induced effects also include the effect on local consumption from changes in disposable income through higher utility rates. Examples of induced benefits include employee's expenditures on items such as retail purchases, housing, medical services, banking, and insurance.

In this analysis, the total, direct, indirect, and induced effects are presented for three categories of income and employment:

- *Employee compensation* includes wages, salaries, benefits, and all other employer contributions. This measures the financial value of associated employment.
- *Proprietor income* consists of payments received by self-employed individuals and unincorporated business owners.
- *Other property income* consists of items such as corporate profits, capital consumption allowance, payments for rent, dividends, royalties and interest income.
- *Employment*, demonstrates the number of full- and part-time jobs generated on an annual basis.

Further details on methodology follow later in the report.

Findings on the Increase in Wastewater Treatment Costs

The Tentative NPDES Discharge Permit will result in \$239 million in additional annual costs to Sacramento area households and businesses. About \$162 million of these annual costs are associated with capital expenditure outlays and will be split between rate payers (70%) and impact fees for new connections (30%). The other \$77 million in annual costs is associated with operations and maintenance and will be paid by rate payers. We used a detailed list of all SRCSD customers to break down ratepayers between households, government entities, and businesses.

For non-residential ratepayers, increased wastewater costs were assumed not to be significant enough to impact the level of output or location decisions of commercial and industrial users. Thus, the increase in costs was treated as a loss of income to the affected enterprises. All commercial use categories and industrial customers were assigned a 6-digit NAICS code that best matched the description, and we used estimates of proprietor and corporate income by NAICS code to allocate the lost income. Following accepted best practices in local economic impact analysis, we assumed all corporate income flowed outside the area and did not enter the loss into the input-output model. In contrast, losses to proprietor's income were included. Some of the existing commercial and industrial users are public agencies such as schools and prisons. For these customers, the increased wastewater costs (\$5.236 million) were treated as a loss in budget and entered into the input-output model using standard institutional spending patterns. Impact fees were allocated between the commercial and residential construction sectors according to the proportions of residential and commercial users among current customers.

The effect of increased impact fees on construction and development is an important issue. The current recession has pushed the market value of most new residential and commercial development below the cost of construction, resulting in a 90% decline in development activity that is at the center of the severe recession in the Sacramento area. Impact fees are a substantial component of development costs, and render most new development infeasible at their current levels. Further increases to these fees due to the increased wastewater costs make new projects even more infeasible, and would undoubtedly delay or even halt many of the small number of projects currently going forward. As real estate values eventually begin to recover, more projects will become feasible and development activity will increase. Higher impact fees mean that an even greater recovery in values will be required before projects become feasible, and could substantially impact an economic recovery that has already been slow to arrive. Using a single-family home as an example, the proposed increase in wastewater impact fees will increase the cost of building the average new home in the Sacramento area between 2% and 7%. Therefore, existing home prices will have to appreciate an additional 2-7% beyond inflation in other building costs before becoming financially feasible, and homebuilding regains momentum.

Thus, we believe these fee increases are likely to push back the timing of the recovery in development by 1 to 3 years, and have a significant negative impact on the economic recovery. There would be some boost from constructing the treatment plant upgrades, but that would not begin until several years of design and preparation work were completed. It would also have permanent impacts on housing affordability in the Sacramento area both by increasing average housing costs, and the fixed nature of fees means it would have a proportionally greater impact on the financial feasibility of more affordable housing development. Despite these short-run delays in development, we do not believe the additional fees will greatly affect the pace of development in the long-run, although the additional permit costs could impact the size, quality, and cost of

the permitted structure. As a result, we have conservatively limited the impact on the construction sector to the direct cost of additional fees allocated to this sector.

Figure 1. Allocation of Increased Wastewater Treatment Cost Components

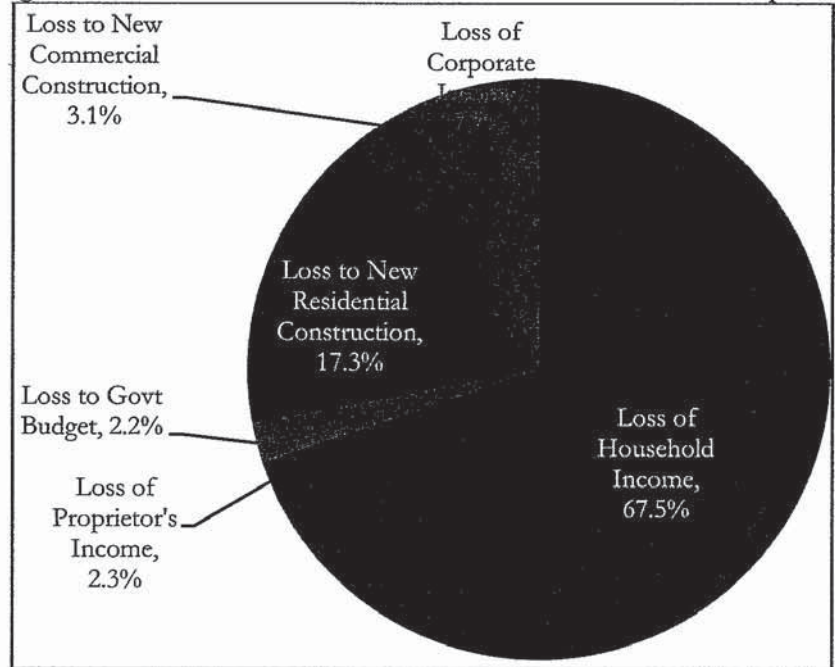


Figure 1 shows the breakdown of costs between different groups. We estimate the \$239 million annual increase in rates and fees will directly reduce Sacramento household disposable income by \$161.4 million annually, reduce construction spending by \$48.6 million, reduce business income by \$23.7 million, and impose a new \$5.2 million cost on government facilities, primarily schools.

Household income losses to rate payers account for the largest share cost, 68% (\$161 million), and were distributed across income classes according to latest Census data and entered associated income losses into the IMPLAN model according to these categories as represented in Table 1. The model then estimated the resulting loss in local spending, and the impacts across economic sectors.

Table 1 Treatment Cost Losses to Households by Income in Sacramento County

Annual Household Income	Number of Households	Loss to Households
HH LT 10k	43,871	(\$13,398,6183)
HH 10-15k	31,293	(\$9,557,178)
HH 15-25k	63,242	(\$19,314,705)
HH 25-35k	68,329	(\$20,868,322)
HH 35-50k	90,152	(\$27,533,273)
HH 50-75k	108,308	(\$33,078,287)
HH 75-100k	57,935	(\$17,693,897)
HH 100-150k	45,478	(\$13,889,411)
HH 150k+	19,745	(\$6,030,310)
Total Losses to Households		(\$161,364,000)

The increased wastewater costs described above will reduce economic activity and employment in the Sacramento area. Table 2 shows our estimate of a total of 1,810 lost jobs. Induced job losses are the largest category, and primarily result from decreased local consumer spending from the \$161 million decline in household disposable income. The 380 direct lost jobs are primarily construction jobs lost due to increased wastewater impact fees.

Table 2 Treatment Cost Employment Effects

	Direct	Indirect	Induced	Total
Total Employment	-380	-130	-1,300	-1,810

Business Forecasting Center, September 2010
Data Source: IMPLAN, 2008 Coefficients.

On top of the direct loss in disposable income from higher bills, the resulting decline in economic activity will generate additional income losses. Table 3 details the additional lost income with a \$77.3 million annual loss in employee compensation being the largest component. Direct employee compensation impacts are estimated to be equal to \$20.8 million per year, indirect impacts \$5.7 million and, and induced impacts a further \$50.7 million in losses. Annual losses in proprietor income from treatment costs will equal \$12.1 million in total effects, and losses to other property income equal \$39.8 million in total effects annually.

Table 3 Treatment Cost Income Effects

	Direct	Indirect	Induced	Total
Total Income Effects	(\$25,451,861)	(\$8,744,494)	(\$94,896,909)	(\$129,093,263)
Employee Compensation	(\$20,823,017)	(\$5,688,737)	(\$50,763,901)	(\$77,275,655)
Proprietor Income	(\$3,524,612)	(\$931,271)	(\$7,608,895)	(\$12,064,778)
Other Property Income	(\$1,104,232)	(\$2,124,486)	(\$36,524,113)	(\$39,752,830)

Business Forecasting Center, September 2010
Data Source: IMPLAN, 2008 Coefficients.

The income effects in Table 3 are the losses that are generated from the changes in economic activity in the input-output model. They are in addition to the loss in disposable household and business income that results directly from higher utility rates. As discussed earlier, the increased wastewater treatment bills will directly reduce Sacramento household disposable income by \$161 million annually, and reduce business income by \$24 million. Combined with the income losses estimated by the input-output model, the total negative impact on Sacramento area income is \$314.257 million.

Findings on the Project's Facilities Development

The Tentative NPDES Discharge Permit will require new treatment facilities costing \$2.083 billion in total. Development of these facilities is estimated to take five years, resulting in our analysis of \$416.6 million in annual project expenditures. Allocating these expenditures into an institutional spending pattern for construction of public sewerage systems generated the following results.

Table 4 Facilities Employment Effects

	Direct	Indirect	Induced	Total
Total Employment	1,341	503	653	2,497

Business Forecasting Center, September 2010
Data Source: IMPLAN, 2008 Coefficients.

During the facilities five years of development, the project should average direct employment of 1,341 individuals. A further 503 indirect jobs and 653 induced jobs should lead to a total annual average of 2,497 jobs during the treatment facilities development.

Overall, the construction of the new facility will generate an average of \$186.35 million in Sacramento area income during each year of the five year construction period. The facility construction will generate total annual employee compensation of \$123 million. Direct employee compensation impacts are estimated to be equal to \$71.5 million per year on average, indirect impacts \$25.7 million, and induced impacts a further \$25.4 million. Proprietor income from the facilities development will equal \$30.7 million per year, in total effects, and other property income will increase by \$33 million.

Table 5 Facilities Income Effects

	Direct	Indirect	Induced	Total
Total Income Effects	\$99,806,508	\$39,179,508	\$47,368,773	\$186,354,788
Employee Compensation	\$71,509,989	\$25,662,209	\$25,413,174	\$122,585,371
Proprietor Income	\$22,396,651	\$4,629,338	\$3,700,350	\$30,726,339
Other Property Income	\$5,899,868	\$8,887,961	\$18,255,249	\$33,043,078

Business Forecasting Center, September 2010
Data Source: IMPLAN, 2008 Coefficients.

Findings on the Project's Operations

Operating the new facilities required by the Tentative NPDES Discharge Permit will generate \$77 million in annual expenditures. The economic impact of these expenditures is estimated through an institutional spending pattern based on annual component estimates provided in a technical memorandum on the treatment process and illustrated in Figure 2 below.

Figure 2 Operating Cost Components

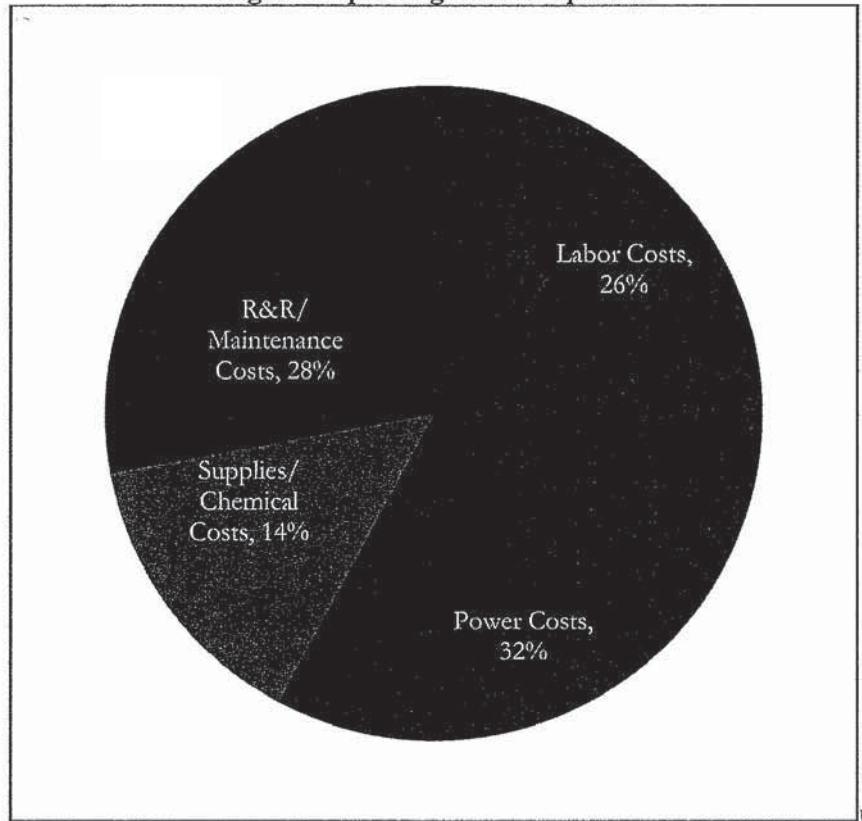


Table 6 Operations Employment Effects

	Direct	Indirect	Induced	Total
Total Employment	236	127	140	502

Business Forecasting Center, September 2010
Data Source: IMPLAN, 2008 Coefficients.

Operations should average direct employment of 236 individuals. A further 127 indirect jobs and 140 induced jobs should lead to a total annual average of 502 jobs from operation of the new treatment facilities.

Table 7 Operations Income Effects

	Direct	Indirect	Induced	Total
Total Income Effects	\$19,823,002	\$14,802,811	\$10,131,900	\$44,757,713
Employee Compensation	\$17,501,664	\$8,289,774	\$5,435,195	\$31,226,633
Proprietor Income	\$0	\$1,716,369	\$794,881	\$2,511,250
Other Property Income	\$2,321,338	\$4,796,668	\$3,901,824	\$11,019,830

Business Forecasting Center, September 2010
Data Source: IMPLAN, 2008 Coefficients.

Overall, the operation of the new treatment facilities will generate \$44.8 million in Sacramento area income. Operations will generate annual employee compensation effects of \$31.2 million in total. Direct employee compensation impacts are estimated to equal \$17.5 million per year, indirect compensation impacts \$8.3 million, and induced employee compensation impacts a further \$5.4 million. Proprietor income from operations will total \$2.5 million per year, in total effects. Other property income effects will equal \$11 million in total annually.

Conclusion

The Tentative NPDES Discharge Permit for the Sacramento Regional Wastewater Treatment Plant would directly cost Sacramento ratepayers \$239 million annually. Most of these costs would be paid by low and middle-income residential households. The increased bills will directly reduce Sacramento household disposable income by \$161 million annually, reduce business income by \$23.8 million, and impose a new \$5.5 million cost on government facilities, primarily schools. We estimate the increased impact fees would cause an approximately \$48.6 million annual decline in construction spending.

The project would also generate a number of associated economic impacts on the Sacramento economy. Reduced consumer and government spending due to higher sewer bills, and reduced construction spending from higher impact fees would eliminate 1,810 jobs and create an additional \$129 million decline in regional income. These losses would be offset by new jobs and income created by the construction and operation of the expanded wastewater treatment facility. During the construction period, the project is estimated to create 2,497 jobs and \$186.4 million in regional income. The operation of the facility will sustain 502 jobs and increase income by \$44.8 million.

Considering all the effects, the average annual economic impacts over the 30 year analysis period on the Sacramento Region are:

- Annual income loss of \$245.9 million.
- Annual employment loss of 976 jobs.

During the 5 year construction period, the net annual income loss would be \$127.9 million and there would be a net gain of 687 jobs. After the construction period, we estimate an annual net income loss of \$270 million and a net loss of 1,308 jobs. The primary impact is a loss of disposable income distributed broadly across Sacramento households, with over half of the loss falling on households with annual incomes below \$50,000.

Overall, this is a conservative assessment of regional impacts. SRCSD estimates rate increases will be even larger than our projections. We also assume increased impact fees will only have a small effect on the amount of new development over 30 years, and only reduce the average output of the construction industry by an amount equivalent to the increased fee payments. While the impact on development over 30 years will be relatively small, the effect will be greatest in the near term, pushing back the date at which many development projects become financially feasible for several years and delaying Sacramento's recovery from the recession.⁸ The report assumes no effect on local electricity costs, although the project will generate a substantial increase in SMUD's electricity demand. We assume increased wastewater treatment rates will not be significant enough to affect the location, operation or investment decisions of businesses, and that lost corporate income flows outside the region. Due to these conservative assumptions, the negative impacts could be larger than

⁸ For an assessment of increased impact fees on the feasibility of proposed developments in the Sacramento areas, see "Sacramento Regional County Sanitation District Potential Fee Increase Feasibility Analysis," Economic and Planning Systems, Inc. October 8, 2010.

we estimate. On the other hand, the negative impacts could be smaller than we estimate if less advanced, lower cost treatment options suggested by Central Valley Regional Water Quality Control Board consultants were developed in more detail and proven to satisfy regulatory requirements as well as the scale and site requirements of the SRCSD plant.

The results of this study inform planning and regulatory decisions regarding the San Joaquin-Sacramento Delta, and can be compared to analysis we have conducted on other aspects of the Delta issue. In a recent analysis conducted in cooperation with UC-Davis researchers, we estimate that reduced agricultural water supplies due to Delta pumping restrictions to protect endangered species result in an income loss of \$72 million and the loss of 1,400 jobs in the San Joaquin Valley.⁹ We have also estimated that the closure of the salmon fishery in 2008 and 2009 created an annual loss in California of about 1,800 jobs and \$120 million in income.¹⁰ Our initial analysis of Sacramento wastewater treatment upgrades was limited to nutrient reduction, and we estimated an average loss of 390 jobs and \$94 million in income.¹¹ The \$246 million estimate of lost income from the Tentative NPDES Discharge Permit for Sacramento are more than double the loss estimated in these other cases, whereas the job loss is lower since sewer impacts are distributed across hundreds of thousands of households rather than being concentrated in a low-wage industry like agriculture.

⁹ "A Retrospective Estimate of the Economic Impacts of Reduced Water Supplies to the San Joaquin Valley in 2009," September 28, 2010. http://forecast.pacific.edu/water-jobs/SJV_Rev_Jobs_2009_092810.pdf. In the same report, the UC-Davis agricultural economists estimated the loss as 3,000 jobs and \$112 million in income.

¹⁰ "Employment Impacts of California Salmon Fishery Closures in 2008 and 2009." April 1, 2010. <http://forecast.pacific.edu/BFC%20salmon%20jobs.pdf>.

¹¹ "Advanced Wastewater Treatment for Nutrient Reduction: Impact on Sacramento Income and Employment." August 23, 2010. <http://forecast.pacific.edu/water-jobs/SRCSD%20Treatment%20Final.pdf>

Appendix One: Input-Output Methods

The measurement of economic impacts in this analysis was performed using an input-output (I/O) model called IMPLAN. It is, in a sense, a general accounting system of economic transactions between industries, businesses, and consumers that estimates the full range of impacts on sales (output), wages (personal income), jobs (employment), and taxes. IMPLAN creates complete, extremely detailed Social Accounting Matrices (SAMs) and Multiplier Models of local economies that enable in-depth examinations of national, state, multi-county, county, sub-county, and metropolitan regional economies.

IMPLAN was developed in the late-1970s by the United States Forest Service to estimate the economic impact of alternative land management options. In the mid-1980s, researchers at the University of Minnesota began developing IMPLAN for non-Forest Service users. Initially, IMPLAN was based on input-output accounts whose analysis was pioneered in the Nobel Prize winning work of Wassily Leontief. In 1993, a technology transfer agreement with the University of Minnesota led to the Minnesota IMPLAN Group (MIG) taking over development, distribution and support of IMPLAN.¹²

In the late-1990s, MIG enhanced IMPLAN with the release of Version 2 which included a modeling system that created SAMs. With SAMs input-output accounts are extended to include institutional, non-market, financial flows, thereby facilitating the examination of all economic transactions within an economy. Recently, MIG has further enhanced IMPLAN with Version 3 including a gravity model to estimate commodity trade flows between regional economies. This allows IMPLAN to estimate regional purchase coefficients (RPCs) that reflect region specific production patterns down to the county level. Using the derived trade flows between regions, Version 3 can also create multi-region input-output models.¹³

This model provides a comprehensive view of the project's economic impacts in Sacramento County. The BFC used scenarios based on technical memorandum and discussions with the SRCSD to calibrate the economic models and derive direct inputs. Details of the assumptions underlying the scenarios are included in Appendix One.

¹² IMPLAN Website (www.implan.com) Accessed 03/30/2010.

¹³ Olson, D and G Alward (2009) "Revised IMPLAN RPCs" V3 Gravity Model Reference Document accessed from IMPLAN Website (www.implan.com) Accessed 03/30/2010.

Strength in Prosperity, Pride in Community www.rainbowchamber.com



Committee on Governmental Affairs

December 6, 2010

Ms. Katherine Hart, Chair
Central Valley Regional Water
Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670

RE: Your Board's Tentative (Draft) Permit for waste water discharge for the
Sacramento Regional County Sanitation District ("SRCSD")

Dear Ms. Hart:

The Sacramento Rainbow Chamber of Commerce ("RCC") represents over 300 LGBT business owners and their allies, located throughout the Sacramento region, most within the SRCSD. Many of our members also live in the District. From the information available to us, it appears the size of the rate increases to Sacramento-area users required by the Tentative Permit would be detrimental to the economy of the Sacramento region and therefore our membership.

The RCC supports reasonable efforts to improve and protect the environment, and specifically the water quality of the California Delta, which is a critical biological resource. While we believe that the SRCSD – like other waste water operations – can and should do more in this regard, the RCC would counsel against the \$2.1 billion improvement costs and the resulting abrupt rate increases that your proposal would



Rainbow Chamber of Commerce of Sacramento

1337 Howe Avenue, Suite 250
Sacramento, CA 95825
(916) 266-9630

evidently require. We also would object to the impact of these environmental protections being imposed disproportionately on the waste water rate payers of the Sacramento region.

The Sacramento region's economy is already precarious. The waste water disposal fees which we are told would be needed to implement the improvements your Board seeks would likely jeopardize or delay a future economic recovery. Examples of these rate increases include tripling the monthly residential waste water fee from \$20 to \$60; increasing the new home hookup fee from \$7,500 to over \$30,000; and increasing a new "dine-in" restaurant's hookup fee from \$15,000 to \$70,000 per 1,000 square feet of floor space. All rate payers within the SRCSD would suffer these increases, either directly or indirectly through increased prices or rents.

We note that many of those who question the Tentative Permit, including the SRCSD, dispute whether your Board's proposal is based on sound science. We at the RCC cannot comment on that point, except to say that any decision – to be reasonable – must be based on sound science. If sound science dictates that the SRCSD implement some or all the improvements outlined in the Tentative Permit, to mitigate their impact the RCC would advocate that implementation be delayed and/or phased-in over a reasonable period of time, to help protect rate payers and promote the needed economic recovery. We also strongly urge that additional programs be put in place to significantly lower the waste water costs of "green" users whose practices place a lesser burden on the waste water system.

Thank you for your consideration.

Sincerely,

SACRAMENTO RAINBOW CHAMBER OF
COMMERCE

GWF:n
cc: RCC Membership

GERALD W. FILICE
Member-At-Large, Board of Directors
Chair, Committee on Governmental Affairs
Filice Law Offices (916) 529-4635

Sacramento



Rainbow Chamber of Commerce of Sacramento

1337 Howe Avenue, Suite 250
Sacramento, CA 95825
(916) 266-9630

Water Market Insider



Central California | Q1 2011



Spot Market Helps to Meet Demand for Water

Water Shortages Persist in Central Valley

The water market in California's Central Valley provides an integral mechanism for allocating available water supplies to their highest valued uses. Recent drought conditions and environmental regulations have highlighted both the importance and limitations of water markets in the region. The Central Valley's single-year lease market or "spot market" for water is active, and serves as an important water supply source for urban, agricultural, and environmental interests.

Central Valley region and throughout California. Federal, state, and local agencies recognize the benefits of the water market and are working to implement programs and policies that will ease impediments to future water trading activity.

Physical and Regulatory Barriers Restrict North-to-South Water Movement

While southern California accounts for approximately 80% of the state's water use, over 70% of surface water supplies originate in

northern California. To address this, many spot market trades move water from relatively lower-valued agricultural applications in the north to urban, agricultural and environmental water uses in southern regions of the state.

In the Sacramento-San Joaquin River Delta (Delta), water transfers are especially restricted by pumping capacity limitations. There, environmental regulations intended to protect threatened fish populations have further reduced through-Delta trading activity by limiting the conditions under which water can be pumped from the Delta into the California Aqueduct. A Delta "fix" remains uncertain at this time which may limit the appetite of buyers located south of the Delta for north of Delta water supplies.

Table 1: Snapshot of Spot Market Trading from 2000-2010

Market Metrics: 2000-2010	
Mean Price	\$160/AF/Year
Median Price	\$135/AF/Year
48-Month Range	\$25 - \$500/AF/Year
24-Month Range	\$50 - \$450/AF/Year
Average Annual Volume Traded	403,500 AF
Average Annual Value Traded	\$57,000,000

While the state of California is evaluating the construction of new storage and conveyance infrastructure to expand water supplies, these projects are politically and financially challenging to implement. Even if successful, completion of the projects is many years off. Consequently, spot market water trading will continue to be an important tool for managing water shortages in the

The State Water Project (SWP) and Central Valley Project (CVP) facilitate trading among geographically dispersed buyers and sellers through a vast network of canals and storage facilities. However, canal conveyance and pumping capacity limitations as well as fees and priorities for accessing the capacity constrain the regional movement of water and spot market activity.

WATER MARKET METER

(12-MONTH TREND)

AVERAGE MARKET PRICE

\$181/AF/YEAR
Average annual prices, 2000 - 2010: \$160/AF/Year

NUMBER OF TRADES

36 TRADES
Average annual number of trades, 2000 - 2010: 25

VOLUME TRADED

344,675 AF
Average annual volume traded, 2000 - 2010: 403,510 AF

This report is the first in a new series of quarterly reports about the water-rights industry. Let us know how we can make this publication as valuable as possible to you in your business. Submit your feedback by emailing us at info@waterexchange.com or by contacting us online at www.waterexchange.com.

Supply and Demand Dynamics Drive Up Prices

Spot Market Prices Show Strong Appreciation

In recent years, spot market prices for water rose rapidly in response to a persistent drought and heightened regulatory restrictions.

Over the period from 2000 to 2010, lease rates averaged \$160/Acre Foot (AF) annually, with the majority of trades ranging between \$95 and \$150/AF annually. Lease prices increased at an average rate of approximately 6% year-over-year during that time.

The origin of the water affects market value. Water originating north of the Delta sells for 30% to 35% less than water supplies originating south of the Delta due to the potential risks and losses associated with transferring water from northern California through the Delta region.

Trading volume remained flat between 2007 and 2010, averaging 323,000 AF/Year with little variation. In 2009, the average spot market price for water rose 34% over the previous year's average to \$252/AF due to limited supply (see Figure 1). Drought conditions have also resulted in increased price volatility in the spot market due, in part, to important regional market differences and physical and regulatory constraints on water mobility (see Figure 2). While improved water supply conditions in 2010 caused prices to soften, it is unlikely that prices will decline to the low levels observed in previous water abundant years. ■

Figure 1: Drought Conditions Drive Up Spot Market Prices

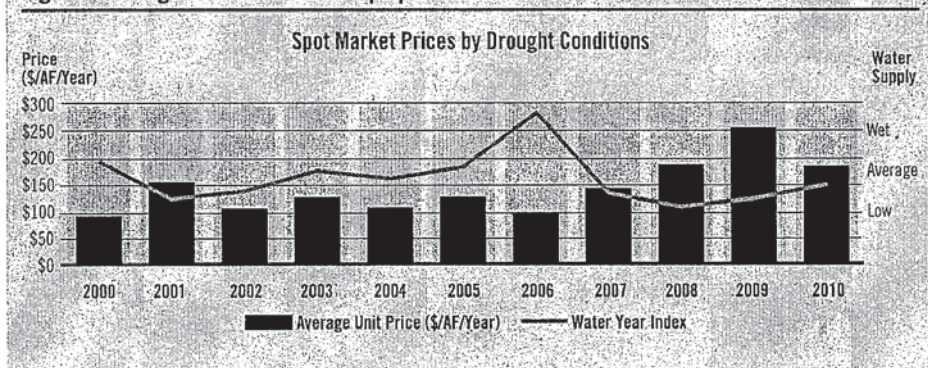
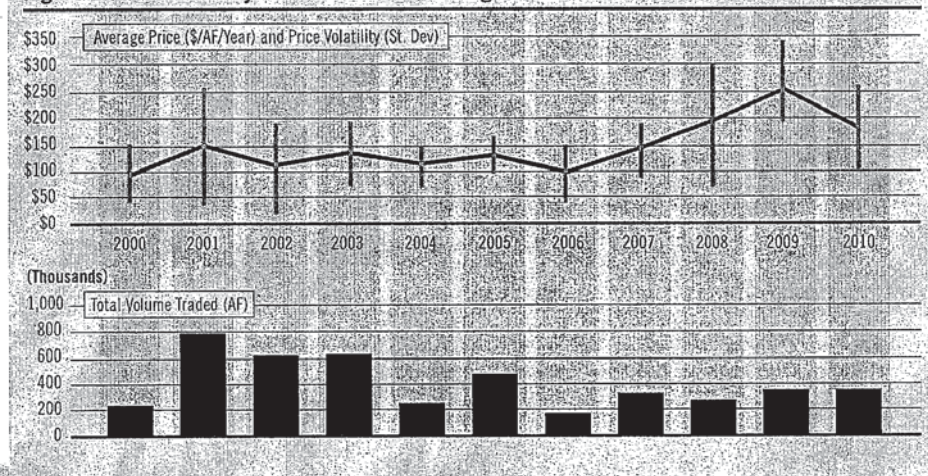


Figure 2: Price Volatility Persists Even as Trading Volume Stabilizes



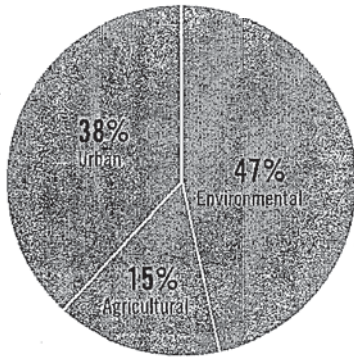
Permanent Water Entitlement Sale Prices Rise to New Highs

Three landmark deals completed in late 2009 and 2010 have raised the bar for permanent water entitlement prices in California. A 2009 transaction moved a 14,000 AF SWP entitlement from Sandridge Partners, a Dudley Ridge Water District landowner, to the Mojave Water Agency for \$5,250/AF. Another permanent SWP sale negotiated between a land developer and Tejon Ranch Company (NYSE:TRC) traded 1,998 AF for \$5,850/AF. These prices are approximately 200% above the average price in previous SWP entitlement transactions. Most recently, the cities of Davis and Woodland acquired a 10,000 AF Sacramento River water right historically used on the Conaway Ranch. The net present value of the purchase price for this asset amounts to approximately \$3,400/AF. The new owners of Conaway Ranch also recently entered into negotiations with Metropolitan Water District for up to 13,500 AF per year for \$250/AF under a long-term lease agreement.

While permanent surface water right trading activity in California remains limited, these recent transactions are likely to drive asset valuations and purchase prices above prior levels. ■

Trading Volumes Stabilize as Environmental Water Users Buy Less

Figure 3: Total Volume Traded by End Use from 2000–2010



Since 2000, environmental water users have acquired a larger cumulative volume of water on the spot market than urban or agricultural water users. (See Figure 3.)

Recent trading activity has been driven primarily by agricultural and urban demands to firm up supplies during dry years. Agricultural water users have grown more active on the buyer side as increased permanent crop plantings has

hardened water demand and limited the flexibility that previously existed to fallow annual crops to protect investments in vine and tree crops. Environmental spot market activity declined significantly with the exit of the federal and state supported Environmental Water Account as a buyer in the market. (See Figure 4.) ■

Total Water Market Value Spikes in 2009–2010

More than \$625 million has traded in California's spot water market since 2000. Annual water trading activity and total market value are highly responsive to annual water supply conditions within the state. For example, the market reached a high of \$95 million in 2001, one of the driest years on record. Comparatively, the total market value hit a low of \$13 million in 2006, a comparatively wet period.

During 2009, the total market value was \$83 million, up 106 percent from the previous year. Despite improved water availability, \$65 million was traded on the spot market in 2010, higher than average for this market. (See Figure 5.) ■

Figure 4: Trading Volume Stabilizes as Environmental Purchases Decline

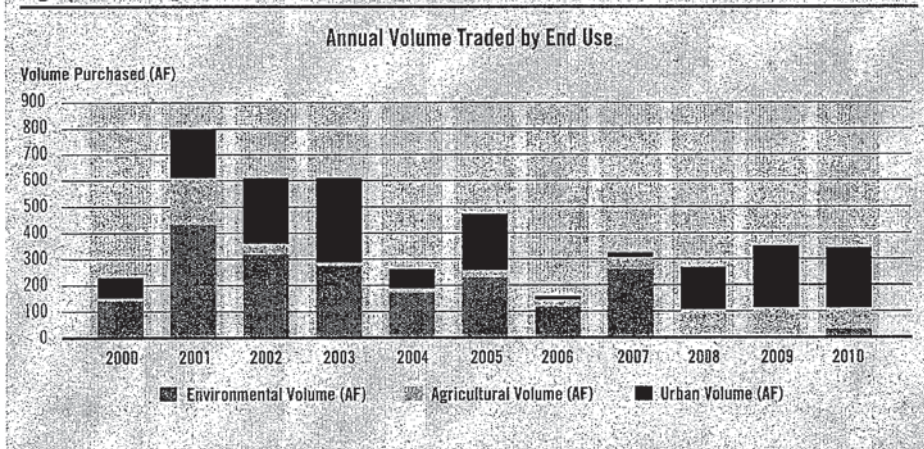
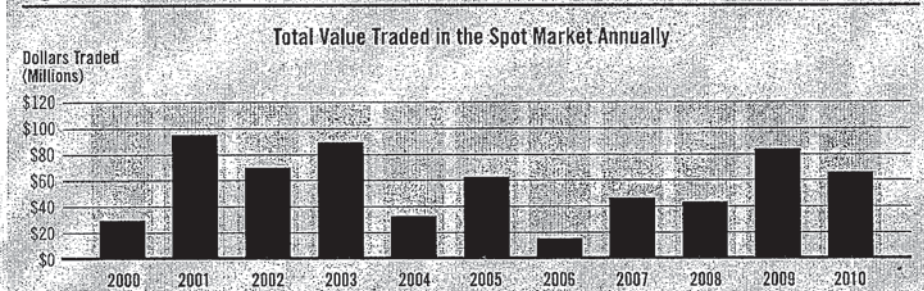


Figure 5: Total Value Traded Annually from 2000–2010



Water Market Outlook

The spot market for water in the Central Valley is influenced by a variety of physical, regulatory and market factors. Some of the key factors affecting trading activity and pricing are discussed below.

SNOW PACK: The quantity of surface water available is closely linked to mountain snowpack. Central Valley water lease rates and trading volumes are higher in drought years with low snowpack levels than in wet years. On December 28th 2010, the Department of Water Resources (DWR) announced the first snow survey results of the 2011 season. According to the survey, statewide snowpack was 198% of normal for the date, indicating that the state may be emerging from drought conditions. In addition, the DWR set the initial State Water Project allocation for 2011 at 50%, and expects allocations to rise over the coming months. Increased water availability in 2011 will cause spot market prices and trading volume to stall or decrease in the short-term.

STORED WATER LEVELS: Three consecutive drought years between 2007 and 2009 depleted surface and ground water storage levels. However, recent higher than normal precipitation has resulted in improvements in reservoir levels and increased ground water recharge activities. During late 2010, surface storage water levels increased to 79% of average statewide. It remains too early to determine how much storage levels will recover during 2011. However, it seems likely that spot market activity will continue at lower prices than observed in 2009 and 2010 as buyers work to rebuild storage accounts.

REGULATORY CONDITIONS AND ENVIRONMENTAL MITIGATION: A 2007 court directive restricted pumping in the Delta to protect threatened fish

specifies there. These pumping limitations have reduced the volume of water made available to the CVP and SWP by an estimated 60 percent. There are new proposals being considered to implement additional pumping restrictions, further cutting the amount of water delivered through the Delta. We believe continued regulatory uncertainty in the management of the Delta will likely cause further price volatility within the market.

Despite regulatory constraints on Delta pumping, agricultural and urban entities maintain an interest in market transactions involving North of Delta water supplies. In the past, the state has administered programs to support trades between sellers located north of the Delta and buyers to the south. For example, the 2009 DWR Drought Water Bank resulted in water sales from 19 north of Delta irrigators, and the 2010 Water Transfers Program helped to market water from 10 entities. However, these programs have been reactive to drought conditions rather than programs to support long-term through-Delta trading. The San Luis and Delta-Mendota Water Authority and Bureau of Reclamation are in the early stages of preparing environmental documentation to streamline long-term, through-Delta water transfers. These programs represent important efforts to reduce the risk and transaction costs associated with through-Delta trades.

Currently, state water policy focuses on promoting spot market transfers of water.

AGRICULTURAL PRODUCTION: California's permanent crop acreage has been expanding by over 1.5 percent annually. The financial cost of fallowing permanent crops is high. As a result, the water supply flexibility that producers had in

the past to respond to limited water supplies is diminishing. Agricultural producers, particularly on the west side of the Central Valley, have become active buyers in the market, especially during dry years. The increased demand in the agricultural sector for firm water supplies will result in higher spot market activity and prices moving forward.

Crop prices can further impact the spot market for water on the supply side. For farmers, the primary suppliers in California's water market, high crop prices can increase the cost of supplying water to the spot market. Prices for rice, a crop commonly produced north of the Delta and idled in support of spot market transfers, peaked in 2008 and 2009 contributing to high spot market prices. Rice prices are projected to ease slightly in 2011 while remaining well above average.

Upward pressure on prices will persist

Statewide water supply availability appears to be improving for 2011. However, diminished stored water levels from previous dry years and partial CVP and SWP deliveries due to environmental concerns will increase reliance on the spot market as a water supply source for some users. While uncertainty surrounding conveyance capacity in the Delta will continue to limit through-Delta transfers, state and federal efforts to encourage water trading may help to reduce the risk of future through-Delta transfers. Overall, spot market trading volume and prices are expected to be higher than in previous years with comparable water supply conditions. ■



ABOUT WESTWATER RESEARCH

WestWater Research is the leading firm in the water rights industry. WestWater specializes in transaction advisory services, water right valuations and appraisals, marketing services, water resource economics, and investment services. Since its inception in 2001, WWR has advised clients in every western state, including Alaska and Texas, on various water rights projects. We are forging new markets and developing innovative solutions in the water markets. WestWater Research's team excels at finding creative solutions to complex water marketing issues. ■

Visit us at www.watereexchange.com.



February 11, 2011

The Honorable Roger Dickinson
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0009

RE: Assembly Bill 134 (Dickinson) **SUPPORT**

Dear Assemblymember Dickinson:

On behalf of the North State Building Industry Association (NSBIA) and our over 500 member companies in home building and land development, I would like to express our unqualified support for Assembly Bill (AB) 134. AB 134 would provide a pathway for the greater Sacramento region to generate new revenue to offset the costs demanded by the new permit requirements recently placed upon the Sacramento Regional County Sanitation District (SRCSD).

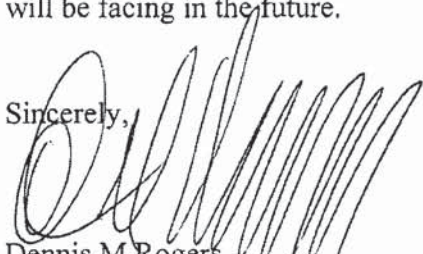
Improved treatment of wastewater and expanded water reuse programs by the SRCSD can help with restoration efforts for the Sacramento-San Joaquin Delta. This benefit to the state comes at an extremely high cost to the Sacramento region. This increased cost of compliance, which will benefit both Northern and Southern California communities, will have a dramatic and direct impact on the Sacramento region's economy.

SRSD's will be required to spend \$2.1 billion to upgrade its wastewater treatment facilities. The completed project will produce recycled water clean enough to be used for unrestricted agricultural and recycled water uses. Ensuring that SCRSD has the ability to put its treated wastewater to its highest and best use is extremely important to our region.

It is our understanding that AB 134 will not impact exiting water rights or create new or additional rights. This measure will simply clarify the right of SCRSD to utilize their treated effluent as a part of the overall financing package for the required upgrades.

Again, on behalf of the NSBIA, I would like to express our strong and unqualified support for AB 134. This legislation is critical to offsetting the dramatic increases the Sacramento region will be facing in the future.

Sincerely,



Dennis M Rogers
Senior Vice President
Governmental and Public Affairs

1536 Eureka Road
Roseville, CA 95661-3055
phone 916.677.5717
fax 916.677.5734

February 15, 2011

Assembly Member Roger Dickinson
State Capitol, Room 3126
Sacramento, CA 95814

Subject: AB 134 Strong Support

Dear Assembly Member Dickinson:

On behalf of the Downtown Sacramento Partnership (DSP) an organization that represents nearly 400 property and business owners in Sacramento's downtown core, we thank you for your efforts to mitigate costs associated with the required upgrades to the Sacramento Regional County Sanitation District (SRCSD) waste water treatment plant. The DSP looks forward to working with you as a cosponsor of this important measure to protect residential and commercial ratepayers in the Sacramento region.

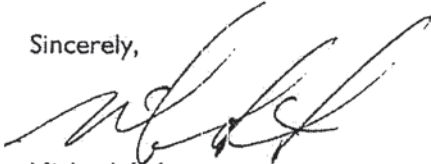
Without another funding source, the slated upgrades to the water treatment facility will cost approximately \$2 billion, potentially tripling bills for SRCSD ratepayers and quadrupling hook-up fees for new construction. These increases, especially in a time of economic uncertainty, could render development, specifically in the downtown core, infeasible. AB 134 could help offset these costs for our constituents and the region as a whole, while concurrently aiding the state in achieving their goal of increasing uses of recycled water.

AB 134 will not affect existing water rights of any other entity or grant water additional rights to SRCSD. The measure will clearly set forth the right of SRCSD to apply for the right with the State Water Resources Board. Additionally, this bill will not set a standard to be followed in future cases, but rather simply extends legislative precedent set in 1961 for the San Joaquin River to the Sacramento River.

In our desire to be responsible environmental stewards, this bill can be used as a tool to finance these upgrades, as complying with the required improvements places a large undue economic burden on Sacramento ratepayers and could further stall economic recovery in the downtown core and across the region.

Again, we thank you for your continued support of ratepayers in the Sacramento region and look forward to continuing to work with you as this process moves forward.

Sincerely,



Michael Ault
Executive Director

CC: Terrie Mitchell, SRCSD
Senate Pro-Tem Darrell Steinberg

916 442.8575
FAX 916 442.2053

980 9th Street, Suite 400
Sacramento, CA 95814

d o w n t o w n s a c . o r g

MAR 1 2011

1782 Tribute Road
Sacramento, CA 95815
T 916.929.7900 F 916.920.9319
courtyard.com/sacce

COURTYARD
Marriott

February 21, 2011

Assembly Member Roger Dickinson
State Capital, Room 3126
Sacramento, CA 95814

Subject: AB 134 Strong Support

Dear Assembly Member Dickinson:

On behalf of the Marriott Cal Expo Properties, a group of 3 hotels that represent nearly 150 employees and countless business's in the Arden/Sacramento area. We thank you for your efforts to mitigate costs associated with the required upgrades to the Sacramento Regional County Sanitation District (SRCSD) waste water treatment plant. I am not sure how we can help you with this campaign but want you to know as a commercial rate payer in the Sacramento region, we will help in anyway possible.

Without another funding source, the slated upgrades to the water treatment facility will cost approximately \$2 billion, potentially tripling bills for SRCSD ratepayers and quadrupling hook-up fees for new construction. These increases, especially in a time of economic uncertainty, could render development, specifically in the downtown core, infeasible. AB 134 could help offset these costs for your constituents and the region as a whole, while concurrently aiding the state in achieving their goal of increasing uses of recycled water.

AB 134 will not affect existing water rights of any other entity or grant water additional rights to SRCSD. The measure will clearly set forth the right of SRCSD to apply for the right with the State Water Resources Board. Additionally, this bill will not set a standard to be followed in future cases, but rather simply extends legislative precedent set in 1961 for the San Joaquin River to the Sacramento River.

In our desire to be responsible environmental stewards, this bill can be used as a tool to finance these upgrades, as complying with the required improvements places a large undue economic burden on Sacramento ratepayers and could further stall economic recovery in the downtown core and across the region.

Sincerely,


Doug Warren
General Manager



CITY OF CITRUS HEIGHTS

6237 Fountain Square Drive • Citrus Heights, CA 95621-5577 • (916) 725-2448
Fax (916) 725-7599 • TDD (916) 725-6185 • www.citrusheights.net

The City of Citrus Heights is committed to providing high quality, economical, responsive city services to our community.

February 25, 2011

Assembly Member Roger Dickenson
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0009

SUBJECT: Support for Assembly Bill 134 (Dickenson)

Dear Assembly Member Dickenson,

As you know, the wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on SRCSD's wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

We hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,

Jeannie Bruins
Mayor
City of Citrus Heights

cc: Senator Darrell Steinberg
Assembly Committee on Water, Parks & Wildlife
Stan Dean, District Engineer for SRCSD

Jeannie Bruins, Mayor • Jeff Slowey, Vice Mayor
Dr. Jayna Karpinski-Costa, Council Member • Steve Miller, Council Member • Mel Turner, Council Member
Henry Tingle, City Manager • Ruthann Ziegler, City Attorney



Board of Directors

President and Treasurer
Joseph J. Kuebler, CPA

Vice President
Philip E. Paule

Ronald W. Sullivan
Randy A. Record
David J. Slawson

Board Secretary
Rosemarie V. Howard

General Manager
Anthony J. Pack

Director of the Metropolitan Water District of So. Calif.
Randy A. Record

Legal Counsel
Redwine and Sherrill

February 25, 2011

MAR 7 2011

The Honorable Roger Dickinson
9th Assembly District
Capitol Building, Room 3126
Sacramento, CA 95814

RE: EMWD Opposes AB 134: Sacramento Regional County Sanitation District

Dear Assemblyman Dickinson:

Eastern Municipal Water District (EMWD) **opposes** AB 134 (Dickinson) which requires the State Water Resource Control Board to grant a permit to the Sacramento Regional County Sanitation District (SRCSD) for the appropriation of treated wastewater upon specified terms and conditions determined by the State. AB 134 would further exempt SRCSD from the Boards approval and review requirements for the appropriation of water, and any change in the point of discharge, place of use, or purpose of use of the treated wastewater.

The stated purpose of AB 134 is to promote and expand recycled water opportunities for the Sacramento Regional County Sanitation District. However, treated wastewater generated from the SRCSD treatment plant would enter directly into the Sacramento River for allocation to buyers, which would in essence eliminate expanded use of recycled water. When faced with a similar situation, EMWD instead invested in local solutions which has enabled EMWD to become the State's fourth largest marketer of recycled water – to this day, EMWD recycles and sells within its service area boundary about 76 percent of the wastewater it treats. Local solutions within the SRCSD should be investigated and supported to truly promote the expanded use of recycled water before efforts are undertaken which would reduce such opportunities.

In addition to reducing the development of local markets for recycled water use, AB 134 would eliminate a number of important controls that are meant to provide review and oversight protections for all Delta water users. This proposal would enable SRCSD to circumvent the review requirements established by the State Water Resources Control Board which sets a negative precedent within the water industry. Discharges to, and allocation of treated wastewater within this critical water resource should be reviewed and must comply with current regulatory standards.

The Honorable Roger Dickinson
February 25, 2011
Page 2

EMWD respectfully requests that SRCSD seek other less impactful solutions that will truly advance water recycling within the service area. If you have any questions regarding this correspondence please contact Tony Pack, General Manager at (951) 928-6109, or by e-mail at packa@emwd.org.

Sincerely,



Joseph J. Kuebler
President, EMWD Board of Directors



Anthony J. Pack
General Manager

cc: Assembly Member Paul Cook Assembly Member V. Manuel Perez
Assembly Member Kevin Jeffries Association of California Water Agencies
Assembly Member Mike Morrell California Special Districts Association
Assembly Member Brian Nestande California Association of Sanitation Agencies
The Metropolitan Water District of Southern California

FOSTERING REGIONAL ECONOMIC PROSPERITY

February 28, 2011

The Honorable Roger Dickinson
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0009

RE: Support for Assembly Bill 134 (Dickinson)

Dear Assemblymember Dickinson,

On behalf of the Sacramento Metro Chamber, I would like to express our support for Assembly Bill 134, which would provide the greater Sacramento region with the ability to generate new revenue to offset the costs associated with the new permit requirements recently placed upon the Sacramento Regional County Sanitation District (SRCSD).

Improved treatment of wastewater and expanded water reuse programs by the SRCSD can help with Sacramento-San Joaquin Delta ecosystem restoration efforts and augment critical water supplies in an environmentally sustainable manner, resulting in benefits throughout the state. However, the cost will be a substantial burden on our region's economic growth and stability.

SRCSD's ratepayers and taxpayers of the Capitol region may soon be required to spend \$2.1 billion to upgrade its wastewater treatment facilities, which will then produce some of the highest-quality recycled water in California, water pure enough for unrestricted agricultural and municipal recycled uses, or dedicated for Delta ecosystem needs. Revenue generated from the sale of this high quality water could help offset much of the high costs associated with the upgrades at SRCSD's water treatment plant that will be necessary to meet the stringent treatment levels currently being proposed by the Central Valley Regional Water Quality Control Board. Without another source of funding, monthly sewer bills could triple for SRCSD ratepayers and new construction sewer hook-up fees could quadruple. As more and more employers fall victim to the burdened economy, leading to more out of work Californians, now is not the time to saddle residential and business ratepayers with arduous and excessive cost increases.

The Sacramento Metro Chamber is the largest, oldest and most prominent voice of business in the greater Sacramento area. Representing over 2,000 member businesses and business organizations in the six-county Sacramento region, the Sacramento Metro Chamber serves as the region's leading proponent of regional cooperation and primary advocate on issues affecting business, economic development and quality of life.

Again, on behalf of the Metro Chamber, I would like to express our strong support for AB 134, as it seeks to increase opportunities for the district to offset costs through the sale and transfer of the high quality reclaimed water it produces. This piece of legislation is critical to insulating the Sacramento region from the perilous impacts of the new wastewater discharge permit which greatly overreaches at the expense of the region's already strained economy.

Sincerely,



Matthew R. Mahood
President & CEO

**metrochamber**SACRAMENTO METROPOLITAN
CHAMBER OF COMMERCE

2011 CHAIR

Gregory Eldridge
CH2MHILL

1ST VICE CHAIR

John Frisch
Cornish & Carey Commercial
Newmark Knight Frank

2ND VICE CHAIR

Mardha Clark Lofgren
Brewer Lofgren LLP

IMMEDIATE PAST CHAIR

Randy Sater
StoneBridge Properties

COMMUNITY DEVELOPMENT

Chris Delfino
Downey Brand LLP

JOBS & BUSINESS GROWTH

Bill Yee
Western Contract

MARKETING & COMMUNICATIONS

Gordon Fowler
3fold Communications

PROGRAMS & EVENTS

Kathy McKim
AT&T

PUBLIC POLICY

Maggie Townsley
ICF International

SMALL BUSINESS

Tim Cahill
Charles C. Bell, Inc.

AT-LARGE REPRESENTATIVES

James Beckwith
Five Star Bank

Elisabeth Brinton

SMUD

Michael O'Brien

Sacramento Magazines Corporation

Beverly "Babs" Sandeen, Ph.D.

University of California, Davis

Shelly Schlenker

Mercy/CHW

METRO PAC

Ardic Zahedani
RCH Group

LEGAL COUNSEL

Sheila Carroll
Carroll & Associates, PC

TREASURER

Warren Kashiwagi
Perry-Smith LLP

PRESIDENT & CEO

Matthew Mahood
Sacramento Metro Chamber



Robert J. McGarvey
Mayor

David Sander
Vice Mayor

Linda Budge
Council Member

Ken Cooley
Council Member

Dan Skoglund
Council Member

February 28, 2011

The Honorable Alyson Huber
Member of the Assembly
State Capitol Room 2179
Sacramento, CA 95814

Fax: (916) 319-2110

RE: AB 134 – Sacramento Regional County Sanitation District (Dickinson)
NOTICE OF SUPPORT

Dear Assembly Member Huber:

On behalf of the City of Rancho Cordova, I am writing to express my support for AB 134.

The wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCSD) wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

I hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,

Robert J. McGarvey
Mayor

cc: Senator Darrell Steinberg, President pro Tem
Assembly Member Roger Dickinson
Assembly Member Jared Huffman, Chair, Water, Parks & Wildlife Committee
Prabhakar Somavarapu, Director of Policy and Planning, SRCSD



**CONTRA COSTA
WATER DISTRICT**

1331 Concord Avenue
P.O. Box H2O
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122
www.ccwater.com

MAR 7 2011

February 28, 2011

Directors

Joseph L. Campbell
President

Karl L. Wandry
Vice President

Bette Boatman
Lisa M. Borba
John A. Burgh

Jerry Brown
General Manager

The Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

**Subject: AB 134 Appropriation of Water: Sacramento Regional County
Sanitation District**

Dear Assembly Member Dickinson:

The Contra Costa Water District (CCWD) Board of Directors has adopted a position of *Oppose Unless Amended* on AB 134 – Appropriation of Water: Sacramento Regional County Sanitation District.

On February 16, 2011, the CCWD Board of Directors adopted a position of *Oppose Unless Amended* on the bill language authorizing Sacramento Regional County Sanitation District's (SRCSD) to file a water right application to facilitate transfer and sale of water beyond SRCSD's service area and requiring the State Water Resources Control Board to issue the permit and exempt SRCSD from the approval process for the change in place and purpose of use.

CCWD is concerned that this bill has the potential to limit the State Board's regulatory role and procedural opportunity for agency input, and could potentially impact senior water right holders' access to supplies from the Sacramento River. This bill could reduce supplies available to downstream legal users of water and does so in a manner that would establish an adverse precedent.

CCWD encourages you to revise language in the bill in order to:

- Eliminate provisions exempting SRCSD's water right application from the State Board's regular water rights review process – in particular, the consideration of downstream effects is necessary in this case due to concerns about injury to other water users, including CCWD.
- Preserve the State Board's discretion to not approve or to modify the application as appropriate, when downstream effects are considered.

Shall v May

The Honorable Roger Dickinson

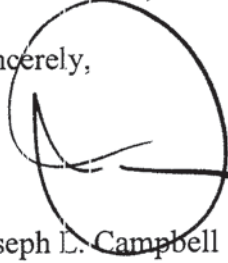
Subject: AB 134 - Appropriation of Water: Sacramento Regional County Sanitation District

February 28, 2011

Page 2

If you have any questions regarding the proposed amendments, please contact Jennifer Allen, Director of Public Affairs at (925) 688-8041.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph L. Campbell", is written over a circular stamp or seal. The signature is somewhat stylized and overlaps the circular boundary.

Joseph L. Campbell
President

JLC/JA:ma

cc: Board of Directors



John V. Rossi
General Manager

Securing Your Water Supply

Charles D. Field Division 1 Thomas P. Evans Division 2 Brenda Dennstedt Division 3 Donald D. Galleano Division 4 S.R. "Al" Lopez Division 5

March 2, 2011

The Honorable Jared Huffman
Chair, Committee on Water, Parks and Wildlife
California State Assembly
State Capitol
PO Box 942849
Sacramento, CA 94249-0006

RE: OPPOSE unless amended- AB 134 (Dickinson): Appropriation of water: Sacramento Regional County Sanitation District

Dear Assemblyman Huffman:

Western Municipal Water District respectfully opposes AB 134 (Dickinson), a bill that would authorize SRCSD to file an application for an application for a permit to appropriate its treated effluent in order to facilitate sale and transfer beyond SRCSD's service area.

Under existing law, the owner of a wastewater treatment plant is required to obtain the approval of the state board prior to making any changes in the point of discharge, place of use, or purpose of use of treated wastewater, and requires the state board to review the proposed changes in accordance with prescribed procedures. This bill requires that the State Board issue SRCSD's permit and exempts their application from the traditional State Board approval and change of use process, eliminating consideration of effects to downstream users and to fish and wildlife, allowing SRCSD to legislatively trump senior appropriative water rights to Sacramento River flows.

AB 134 should be amended to eliminate the exception to the State Board's traditional process for reviewing water rights and appropriations and change of place of use requests. In doing so, the State Board's consideration of injuries to downstream water users and fish and wildlife would be restored, as well as its discretion to not approve or modify the request as appropriate.

For these reasons, Western Municipal Water District opposes AB 134 (Dickinson) until amended.

Sincerely,

JOHN V ROSSI
General Manager

cc: Assemblyman Roger Dickinson Senator Darrell Steinberg Assemblywoman Linda Halderman
Assemblyman Bill Berryhill Assemblyman Bob Blumenfield Assemblywoman Nora Campos
Assemblyman Paul Fong Assemblyman Mike Gatto Assemblyman Roger Hernandez
Assemblyman Ben Hueso Assemblyman Brian W. Jones Assemblyman Ricardo Lara
Assemblywoman Kristin Olsen Assemblywoman Mariko Yamada ACWA

CSDA 14205 Meridian Parkway, Riverside, CA 92518 Main No. 951.571.7100 wmwtd.com



ROBERTA MacGLASHAN
SUPERVISOR, FOURTH DISTRICT
macglashanr@saccounty.net

Ted Wolter
Chief of Staff
woltert@saccounty.net

(916) 874-5491
FAX (916) 874-7593

CHAIR BOARD OF SUPERVISORS
COUNTY OF SACRAMENTO
700 H STREET, SUITE 2450 SACRAMENTO, CA 95814

March 4, 2011

Assemblyman Roger Dickinson
510 Bercut Drive, Suite S
Sacramento, CA 95811

Subject: Support for Assembly Bill 134 (Dickinson)

Dear Assembly Member Dickinson:

As you know, the wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCSD) wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

We hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,

Roberta MacGlashan
Chair, Sacramento County Board of Supervisors

cc: Senator Darrell Steinberg
Stan Dean, District Engineer for SRCSD
Terrie Mitchell, Manager, SRCSD Legislative and Regulatory Affairs
Craig Johns, California Resource Strategies

FRIANT WATER AUTHORITY

Harvey A. Bailey
Chairman of the Board

Nick Canata
Vice Chairman

Tom Runyon
Secretary/Treasurer

Ronald D. Jacobsma
General Manager

D. Zackary Smith
General Counsel

Member Agencies

Arvin-Edison W.S.D.
Delano-Earlimart I.D.
Exeter I.D.
Fresno I.D.
Ivanhoe I.D.
Kaweah Delta W.C.D.
Kern-Tulare W.D.
Lindmore I.D.
Lindsay-Strathmore I.D.
Lower Tule River I.D.
Madera I.D.
Orange Cove I.D.
Pixley I.D.
Porterville I.D.
Saucelito I.D.
Shafter-Wasco I.D.
Stone Corral I.D.
Tea Pot Dome W.D.
Terra Bella I.D.
Tulare I.D.

March 7, 2011

Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

Dear Assemblymember Dickinson:

On behalf of the Friant Water Authority (Authority), I regret to inform you that we must oppose your AB 134, which would authorize the Sacramento Regional County Sanitation District (SRCSD) to file an application for a permit to appropriate a specified amount of water that is based on the volume of treated wastewater that SRCSD discharges into the Sacramento River and recovers for reuse, and would also require the SWRCB to grant a permit to appropriate that treated wastewater upon terms and conditions determined by the SWRCB and would exempt from the review and approval requirements, the appropriation of water and any change in the point of discharge, place of use, or purpose of use of treated wastewater advanced by the SRCSD.

The Authority operates and maintains the Friant-Kern Canal, a conveyance feature of the Central Valley Project. The Authority consists of twenty member water, irrigation and public utility districts. The Friant Service area includes approximately one million acres and 15,000 mostly small family farms on the east side of the southern San Joaquin Valley (Madera, Fresno, Tulare and Kern County). Friant Division water supplies are also relied upon by several cities and towns, including the City of Fresno, as a major portion of their municipal and industrial water supplies.

Main Office
854 N. Harvard Avenue
Lindsay, CA 93247

Phone: 559-562-6305
Fax: 559-562-3496

Sacramento Office
1521 I Street
Sacramento, CA 95814

Phone: 916-441-1931
Fax: 916-441-1581

Website: www.friantwater.org

Assemblymember Roger Dickinson
March 7, 2011
Page 2

Based on the December 2010 action by the Central Valley Regional Water Quality Control Board to approve a new discharge permit for SRCSD's 181-million gallon per day wastewater treatment plant, we recognize the need to take actions in order to streamline the process and to minimize the cost impacts on the SRCSD's customer base. However, we are concerned with the approach outlined in your AB 134 to allow SRCSD to market its treated effluent for sale outside of its service area in order to offset the upgrade costs.

As you already know, SRCSD is allowed under existing law to market its treated effluent for recycled water within its service area. Although SRCSD now operates an existing 3 mgd recycling facility and has completed design for a 10-mgd expansion, apparently there is little local demand for recycled water. Treated effluent that cannot be recycled locally is discharged to the Sacramento River, and once those flows are returned to the river, SRCSD's rights to its treated effluent terminate. In order to market SRCSD treated effluent as a transfer supply, SRCSD would need to obtain an appropriative water right from the SWRCB and approval for a change in place of use and purpose of use. The SWRCB would need to review the application and proposed place of use change and also consider potential injury to legal water users and adverse effects on fish and wildlife.

Your AB 134 would authorize SRCSD to file an application for a permit to appropriate its treated effluent in order to facilitate sale and transfer beyond SRCSD's service area. Although the proponents of your measure have argued that AB 134 is actually modeled after an existing provision in the California Water Code that applies to dischargers on the San Joaquin River (Water Code Section 1485), there appear to be two very significant differences:

- AB 134 would **require** the SWRCB to issue SRCSD's permit (language in Water Code Section 1485 stating "the Board *may* grant the permit" is changed to "*shall*"); and
- AB 134 would exempt SRCSD's application from the traditional SWRCB approval and change of use process, thus eliminating consideration of effects on downstream users and to fish and wildlife.

By eliminating the traditional constraints on the appropriation of water and materially limiting the SWRCB's discretion/requirement to consider impacts on downstream legal users of water, AB 134 would allow SRCSD to legislatively trump senior appropriative water rights to Sacramento River flows. Under analysis that has been performed by the State Water Contractors

Assemblymember Roger Dickinson
March 7, 2011
Page 3

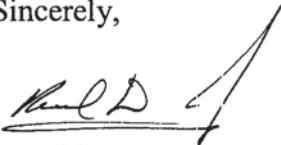
and shared widely among water interests, based on an 82-year hydrologic record, SRCSD would be able to transfer up to 169,000 acre-feet per year south of the Delta, with a long-term annual average of approximately 40,000 acre-feet. This equates to the CVP and SWP export water supplies that could be lost.

We also believe that your AB 134 would set a negative precedent that could similarly exempt other dischargers from consideration of injuries to downstream water users and fish and wildlife that has long stood in the state's existing regulatory scheme.

For these reasons, we must oppose your AB 134.

Glenn Farrel, Government Affairs Manager, is available to answer any questions you may have concerning the Authority's position on AB 134. Mr. Farrel may be reached at (916) 346-4165.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald D. Jacobsma", written over a horizontal line.

Ronald D. Jacobsma,
General Manager

MAR 16 2011

8401 LAGUNA PALMS WAY • ELK GROVE, CALIFORNIA 95758
TEL: 916.683.7111 • FAX: 916.627.4200 • www.elkgrovecity.org

March 8, 2011

The Honorable Roger Dickinson
Member of the California Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0009

**RE: AB 134 – Sacramento Regional County Sanitation District (Dickinson)
NOTICE OF SUPPORT**

Dear Assemblymember Dickinson:

On behalf of the City of Elk Grove, I am writing to express my support for AB 134.

The wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCSD) wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

I hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriate water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,



Steven M. Detrick
Mayor

c: Senator Gaines
Senator Wolk
Assemblymember Huber
Assemblymember Buchanan
Elk Grove City Council

MAR 17 2011



March 10, 2011

Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

Re: Assembly Bill 134 (Dickinson) – **OPPOSE**
Sacramento Regional County Sanitation District

Dear Assembly Member Dickinson:

On behalf of the public agencies and business organizations noted below, we regret to inform you of our opposition to your bill, AB 134, which seeks exemptions from the traditional water right approval process at the State Water Resources Control Board (SWRCB) in order for the Sacramento Regional County Sanitation District (SRCSD) to market the sale of its effluent outside of its service area. Under existing law, treated effluent that cannot be recycled locally by SRCSD is discharged to the Sacramento River, and once those flows are returned to the river, SRCSD's rights to its treated effluent terminate. Under AB 134, some of effluent discharge that could be sold by SRCSD has historically been considered Delta inflow available for use and/or export downstream.

We are concerned that the bill would mandate that the SWRCB issue a permit if filed by SRCSD and would materially limit the SWRCB's discretion to consider impacts on downstream legal users of water and fish and wildlife. AB 134 would also set a precedent that could similarly exempt other dischargers from consideration of injuries to downstream water users and fish and wildlife that has long stood in the state's existing regulatory scheme.

We fully recognize and appreciate the challenges before the SRCSD ratepayers to invest in infrastructure improvements to address ecosystem and water quality challenges in the Sacramento-San Joaquin Delta. We stand ready to work with you and SRCSD to identify available state or federal funds to expedite the construction of treatment facilities to comply with the recently-adopted discharge permit for the SRCSD treatment plant.

Circumventing the SWRCB's normal water rights review process is not a workable solution. While we oppose AB 134 in its current form, we look forward to working with you to find mutually agreeable solutions to assisting in the finance of the necessary upgrades of the SRCSD wastewater facility and addressing the broader water system/ecosystem challenges in the Delta.

Sincerely,

Marian E. Gocz
United Chambers Executive Director

cc: Senate President Pro Tempore Darrell Steinberg

faced to W.P.&W.



OFFICE OF: Mayor

Phone: 951-736-2371
Fax: 951-738-2493

400 S. Vicentia Ave. P.O. Box 940, Corona, California 92878-0940
City Hall Online All The Time - <http://www.discovercorona.com>

March 14, 2011

The Honorable Roger Dickinson
Assembly Member
California State Assembly
Capitol Building #3126
Sacramento, CA 95814

Subject: Oppose unless amended - Assembly Bill (AB) 134: Appropriation of water: Sacramento Regional County Sanitation District

Dear Assemblyman Dickinson:

The City of Corona respectfully opposes AB 134, a bill that would authorize the Sacramento Regional Sanitation District (SRCSD) to file an application for a permit to appropriate its treated effluent in order to facilitate sale and transfer beyond SRCSD's service area.

Under existing law, the owner of a wastewater treatment plant is required to obtain the approval of the State Water Resources Control Board (SWRCB) prior to making any changes in the point of discharge, place or use, or purpose of use of treated wastewater, and requires the SWRCB to review the proposed changes in accordance with prescribed procedures. This bill requires that the SWRCB issue SRCSD's permit and exempts their application from the traditional SWRCB approval and change of use process, eliminating consideration of effects to downstream users and to fish and wildlife, allowing SRCSD to legislatively trump senior appropriative water rights to Sacramento River flows.

AB 134 should be amended to eliminate the exception to the SWRCB's traditional process for reviewing water rights and appropriations and change of place of use requests. In doing so, the SWRCB's consideration of injuries to downstream water users and fish and wildlife would be restored, as well as its discretion to not approve or modify the request as appropriate.

For these reasons, the City of Corona opposes AB 134 until amended.

Sincerely,

Stan Skipworth
Mayor

cc: Assembly Water, Parks and Wildlife Committee
Senator Bill Emmerson
Senator Darrell Steinberg
Assemblyman Jeff Miller



OFFICE OF THE
CITY COUNCIL

JAY SCHENIRER

COUNCILMEMBER
DISTRICT FIVE

CITY OF SACRAMENTO
CALIFORNIA

March 15, 2011

The Honorable Roger Dickinson
Member of the Assembly
State Capitol
Sacramento, CA 94249-0009

Subject: Support Position AB 134 (Appropriation of Water: Sacramento County Regional County Sanitation District (District))

Dear Assemblymember Dickinson,

On behalf of the City of Sacramento, I would like to thank you for introducing AB 134 and for your efforts to help offset costs the District will incur to upgrade the Sacramento Regional Wastewater Treatment Plant. AB 134 is consistent with the City's adopted policies on the Delta Plan and we are in support of the legislation. Specifically, the City supports the proposed legislation as a means to facilitate the District's ability to market its recycled waste water for the benefit of local ratepayers, the Delta and the State.

We understand that statewide opposition to this legislation will likely require amendments as the legislation moves through the process. We will continue to work closely with District staff and your office as this bill evolves.

Sincerely,

JAY SCHENIRER, Chair
Law and Legislation Committee

cc: Senator Darrel Steinberg, President Pro Tem
Mayor Kevin Johnson and Members of Sacramento City Council
David Jones, Emmanuel Jones and Jones and Associates



Inland Empire Utilities Agency

A MUNICIPAL WATER DISTRICT

6075 Kimball Ave. • Chino, CA 91708
 P.O. Box 9020 • Chino, Hills, CA 91709
 TEL (909) 993-1600 • FAX (909) 993-9000
 www.ieua.org

March 16, 2011

The Honorable Assemblyman Dickinson
 State Capitol Building
 Sacramento, CA 94249

**RE: AB 134 (Dickinson): Sacramento Regional County Sanitation District
 Oppose unless amended**

Dear Assemblyman Dickinson:

I am writing on behalf of the Inland Empire Utilities Agency (IEUA) to respectfully oppose AB 134 (Dickinson), which would provide authority to the Sacramento Regional County Sanitation District to obtain an appropriative water right, and market recycled water for sale outside the SRCSD service area.

In December 2010, the Central Valley Regional Water Quality Control Board (Regional Board) approved a new discharge permit for the Sacramento Regional Sanitation District's (SRCSD) 181 million gallon per day (mgd) wastewater treatment plant that will require the District to invest over \$1 billion to upgrade its water quality treatment to achieve a tertiary standard.

In response to the new permit, SRCSD has appealed the Regional Board decision to the State Water Resources Control Board (State Board). In addition, SRCSD has proposed legislation to obtain public financing for the required upgrades and introduced AB 134 which would allow SRCSD to market its recycled water for sale outside of its service area in order to offset upgrade costs. SRCSD is arguing that there is little market for recycled water within its service area, and so is seeking legislative approval to be able to return the recycled water to the Sacramento River and then have the right to sell it to downstream users.

Under existing law, any water agency can market its recycled water for use within its service area, but once the water is returned to a river, its rights to the water are terminated. AB 134 would provide authority to the SRCSD to obtain an appropriative water right to change the place of use and purpose of use that would enable the District to have a right to its recycled water downstream.

There is one example where such legislation has been approved (on the San Joaquin River), but AB 134 has two very significant differences. First, AB 134 *requires* that the State Board issue SRCSD's permit and second the bill *exempts* SRCSD application from the traditional State

Water Smart – Thinking in Terms of Tomorrow

Terry Catlin
 President

Michael E. Camacho
 Vice President

Steven J. Elle
 Secretary/Treasurer

Gene Koopman
 Director

Angel Santiago
 Director

Thomas A. Love
 General Manager

AB 134 (Dickinson): Sacramento Regional County Sanitation District
The Honorable Roger Dickinson
March 16, 2011
Page 2

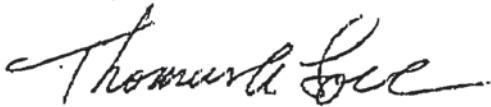
Board approval and change of use process, thus eliminating consideration to downstream users and to fish and wildlife.

By eliminating the traditional constraints on the appropriation of water and materially limiting the State Board's discretion to consider impacts on downstream legal users of water, AB 134 would allow SRCSD to legislatively trump senior appropriative water rights to Sacramento River flows. Analysis performed by the state water contractors over an 82-year hydrologic record indicates that, with AB 134, SRCSD would be able to transfer up to 169,000 acre-feet per year south of the Delta, along with a long term annual average of approximately 40,000 acre-feet. This equates to the Central Valley Project and the State Water project export supplies that would be lost. AB 134 would also set a precedent that could similarly exempt other dischargers from the consideration of injuries to downstream uses and fish and wildlife that has long stood in the state's existing regulatory scheme.

Please don't hesitate to contact me if there is anything I can do to help amend this legislation to ensure that all interested parties are comfortable with the language as the bill moves forward.

Sincerely,

INLAND EMPIRE UTILITIES AGENCY



Thomas A. Love
General Manager

3/24
DG



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

March 17 2011

Assembly Member Jared Huffman
Chair, Assembly Water, Parks and Wildlife Committee
State Capitol, Room 3120
Sacramento, California 95814

AB 134 (DICKINSON) - OPPOSE

Dear Assembly Member Huffman,

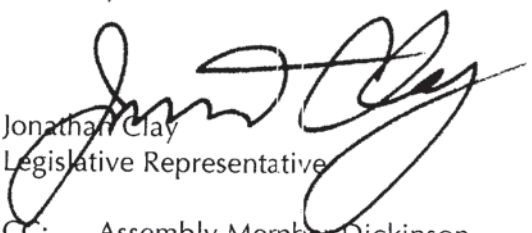
The San Diego County Water Authority opposes by AB 134 by Assembly Member Dickinson, a measure relating to the appropriation of water and the Sacramento Regional Sanitation Agency.

Existing law provides a process for the operator of a wastewater treatment or water recycling plant to obtain an appropriative water right in the wastewater or recycled water stream from a plant. The process requires the approval of the State Water Resources Control Board (SWRCB) and provides protections for downstream users and other water right holders.

This bill would require the SWRCB to grant a permit to the Sacramento Regional County Sanitation District (SRCSD) to appropriate the wastewater stream flowing from an improved and updated wastewater treatment plant. The appropriative right would not be subject to the protections afforded downstream users and other water right holders under existing law and essentially allows the SRCSD to sidestep the usual permitting process. The result may be either the transfer of water out of the river that is currently exported to the state and federal water contractors, or the charging of a price to receive the water that has been or may be exported.

For these reasons, the Board of Directors of the San Diego County Water Authority request your no vote on this important matter.

Sincerely,



Jonathan Clay
Legislative Representative

CC: Assembly Member Dickinson
Members and Staff, Assembly Water, Parks and Wildlife Committee

- CITIES**
- Del Mar • Escondido • National City
 - Oceanside • Poway • San Diego

- IRRIGATION DISTRICTS**
- Santa Fe • South Bay
 - Vista

- WATER DISTRICTS**
- Helix • Otay
 - San Dieguito
 - Vallecitos

- MUNICIPAL WATER DISTRICTS**
- Carlsbad • Ramona
 - Olivenhain • Rincon del Diablo
 - Padre Dam • Valley Center
 - Rainbow • Yuima

COUNTY

- San Diego

(ex officio)

PUBLIC UTILITY DISTRICT

- Fallbrook

FEDERAL AGENCY

- Camp Pendleton Marine Corps Base

MEMBER AGENCIES

PRINTED ON RECYCLED PAPER



AB 134
Assembly Member Dickinson
(Sen. Steinberg, Principal Co-Author)

Background & Need Assessment

Purpose of the Bill

The purpose of AB 134 is to enable the Sacramento Regional County Sanitation District (SRCSD) to file an application with the State Water Resources Control Board for a permit to appropriate an amount of water that is equal to the volume of treated wastewater discharged to the Sacramento River, less diminution by seepage, evaporation, transpiration, or other natural causes between the point of discharge from the SRCSD treatment plant and the point of diversion out of the river or the Sacramento-San Joaquin Delta. AB 134 would require the State Board to issue the permit, subject to specific terms and conditions as in the Board's judgment are necessary to protect the rights of any legal user of the water involved.

AB 134 was introduced on January 12, 2011. Subsequent to introduction, SRCSD has met with dozens of interested parties, some of whom raised various concerns about the bill, primarily with regard to procedural issues related to State Water Board authority under current law. To address those concerns, SRCSD has proposed amendments that clarify and maintain the State Water Board's authority and responsibilities consistent with existing law.

Summary of Existing Law on Issue

Water Code §1210 provides that "[t]he 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 ... unless otherwise provided by agreement." This provision was added to the Water Code in 1980 at the recommendation of the Governor Jerry Brown's Commission to Review California Water Rights Law, and was specifically included to encourage the sale and distribution of recycled water. (*See, e.g.,* Governor's Commission to Review California Water Rights Law - *Final Report*, December, 1978, pp. 62-66. Hereafter, "Commission Report".)

Specifically, the Commission noted, "Advances in wastewater reclamation technology and increasingly stringent water quality standards have created an opportunity for an expanded market in treated effluent. (*Id.* at p. 63.) And while the Commission acknowledged that the sale and distribution of recycled water may raise water rights questions regarding ownership of the treated wastewater, it nonetheless concluded that is "desirable to concentrate the ownership of the resource in one entity rather than multiple entities, such as the water suppliers." (*Id.* at p. 64.)

There is currently no *existing law* on the issue of the right of SRCSD to file a water right application to appropriate water equal to the volume of its discharge to the Sacramento River; however, a similar law exists with respect to water rights applications filed by municipal agencies that operate wastewater treatment plants that discharge into the San Joaquin River. (*See, Water Code* §1485, added by Stats. 1961, Chap. 2143, p. 4419, §1; amended by Stats. 1967, Chap. 284, p. 1446, §8.) Further, the State Board issued Permit 21176

to the City of Stockton on December 20, 2005, thus approving an appropriation of a stated volume of water. (See, *In re: Petition for Reconsideration of the Approval of Application 30531A and the Issuance of Permit 21176 to the City of Stockton*, SWRCB Order WR-2006-0007, March 8, 2006.

Some parties argue that treated wastewater discharged to a surface water body by a municipal treatment agency constitute “return flows” over which the municipal treatment agency has no dominion or right, and which cannot therefore be appropriated by the treatment agency because to do so would infringe on the legal rights of “downstream users” of those return flows. The argument is flawed for at least two reasons. First, under long-established California Supreme Court precedent, “imported water” (such as groundwater) may be recaptured by an upstream water user and the water right thereto transferred to a third party even to the detriment of downstream users. (See, Commission Report at p. 64, citing *Stevens v. Oakdale Irrigation District*, 13 Cal.2d 343, 352 (1939) and *Los Angeles v. San Fernando*, 14 Cal.3d 199, 256-58 (1975).) Under this doctrine, a wastewater treatment agency would have the right to recapture and transfer the water rights attendant to at least that portion of its treated wastewater that is attributable to groundwater and other imported water. In the case of SRCSD, this volume has been estimated to be approximately 50% of the water collected and treated at its wastewater treatment plant.

Second, and perhaps more significantly, discharges of treated wastewater by a municipal treatment agency do not constitute “return flows” as contemplated under various water rights doctrines and, as such, municipal wastewater treatment agencies have the legal right to recapture treated wastewater and freely transfer the water rights thereto. Return flow rules originated in mining and irrigation cases (see, e.g., *Southern California Investment Co. v. Wilshire*, 144 Cal. 68, 72-73 (1904) (agricultural return flows) and *Eddy v. Simpson*, 3 Cal. 249 (1853) (mining return flows)), and generally relate to the unconsumed portion of water that has returned to the natural flow of a stream. (See, e.g., *Anaheim Union Water Co. v. Fuller*, 150 Cal. 327, 330 (1907).) Unlike these traditional sources of “return flows,” however, 100% of the water that reaches a municipal wastewater treatment plant originates as the consumed portion of municipal water deliveries, resulting in wastewater that is, *by law*, not useable or dischargeable without first being treated by the wastewater treatment agency. (Water Code §§13525.5; 13529.2) It is the very act of performing costly treatment of wastewater that converts it into a useable or “new supply” of water. (See, e.g., Water Code §13511.)

In any event, the issue of whether wastewater treatment plant discharges are “return flows” to which other, downstream users may have legal claims over need not, nor is intended to, be resolved at the present time. Indeed, proposed new Water Code §1486 contained in AB 134 allows the State Water Board to impose conditions in any future water right issued to SRCSD in order to protect the rights of any legal user of the water involved.

Need For Bill

AB 134 will provide an additional procedural option for SRCSD to potentially realize the benefit of its treated wastewater discharges. While current law would enable SRCSD to apply for a water right from the State Board, it is unclear whether and to what extent the State Board would grant such a water right. Some water rights lawyers believe that any water right that SRCSD could obtain under current law would be limited to that portion of its flow that is composed solely of groundwater. Moreover, the current time to process water rights applications under existing law is lengthy and undesirable given the exigent circumstances facing SRCSD and the Delta.

Depending on the outcome of its anticipated permit application to the State Board to appropriate water up to an amount equal in volume to its discharge, SRCSD could potentially market that water to willing buyers, thereby offsetting part of what has been estimated to be nearly \$2.1 billion in treatment plant

upgrades that will be necessary to comply with recent regulatory actions taken by the Central Valley Regional Water Quality Control Board (“Regional Board”).

On December 8, 2010, the Regional Board issued Order R5-2010-0114, and adopted a new wastewater discharge permit for SRCSD’s ongoing treatment and discharge of up to 181 million gallons per day (approximately 200,000 acre-feet per year) of municipal wastewater for approximately 1.3 million people in the Sacramento Region. In particular, the new permit will require SRCSD to meet stringent new regulatory limits that have heretofore *not* been imposed on similarly situated municipal wastewater dischargers in the Central Valley.

A recent review of permit decisions taken by the Central Valley Regional Board in a four-year period between January 1, 2007 and December 31, 2010 reveals that the Regional Board adopted 64 NPDES permits for municipal wastewater dischargers and of those, 22 were issued to dischargers with receiving water dilution measured to be at least 20 times the volume of the discharge of treated wastewater. This 20:1 dilution threshold is significant under guidance issued by the Department of Public Health in 1999, which is the dispositive trigger for requiring tertiary treatment of municipal wastewater being discharged to surface waters in California. That DPH guidance is routinely used and relied upon by Regional Boards throughout California in setting pathogens-related treatment standards which municipal wastewater agencies are required to meet. Of the 22 permits issued by the Central Valley Regional Board to dischargers with the minimum 20:1 dilution, only one - - SRCSD’s - - included permit limits that ignored the DPH guidance, instead imposing higher treatment levels. The administrative record attendant to the permit action taken by the Central Valley Regional Board contains many statements, testimony, and written comment letters from legislators, local elected officials, and water interests served by the State and Federal Water Projects that the stringent permit requirements imposed on SRCSD were necessary to protect those communities and water users relying on Delta-supplied water for municipal and agricultural uses.

As a result of the permit action taken by the Central Valley Regional Board, SRCSD has ten years to plan, design, finance, review (under CEQA), and then construct new treatment systems in order to meet the stringent limits imposed, at a preliminary cost estimate of approximately \$2.1 billion. In order to ensure compliance with the final limits imposed by the Regional Board Order, SRCSD has already begun the process that will lead to operation of the treatment plant upgrades, and is now seeking opportunities to offset some of the enormous construction costs. If approved, AB 134 would provide SRCSD an opportunity to seek a water right which could then be marketed to willing buyers of up to 200,000 acre-feet of water each year.

Proposed Amendments to AB 134

Since introducing AB 134 on January 12, 2011, the author and sponsor have met with many stakeholders and interested parties to discuss concerns and possible amendments. In particular, the Metropolitan Water District of Southern California (MWD), Eastern Municipal Water District, Western Municipal Water District, Contra Costa Water District, Inland Empire Utilities Agency, San Diego County Water Authority, and Friant Water Authority expressed concern that AB 134 (as introduced) would exempt SRCSD’s potential water right application from Water Code §1211 and *mandate* that the State Board issue a water right to SRCSD. Further, commenters raised concerns that AB 134 would impact their putative rights to water delivered *via* the State Water Project.

In response to feedback received from various stakeholders and interested parties, the author will propose the following amendments:

(1) Remove proposed Water Code §1486(c), that would have exempted a water right permit application filed by SRCSD from Water Code §1211. (*See*, AB 134, as introduced, Sec. 2 at p. 3, lines 28-31.)

(2) Remove proposed Water Code §1486(a)(1), that would have enabled SRCSD to file a water right application with the State Water Board for an amount of water equal to the amount of water delivered directly for reuse prior to discharge to the Sacramento River. (*See*, AB 134, as introduced, Sec. 2 at p. 3, lines 16-18.)

(3) Clarify that SRCSD's right to apply for a water right shall be limited to the amount of treated wastewater discharged into the Sacramento River, less diminution by seepage, evaporation, evapotranspiration, or other natural causes between the point of discharge from the wastewater treatment plant, and the point of diversion out of the Sacramento River or the Sacramento-San Joaquin Delta. (*See*, AB 134, as introduced, Sec. 2 at p. 3, lines 19-23.)

(4) Clarify that SRCSD's right to apply for a water right shall be subject to the terms and conditions imposed by the State Water Board that are necessary for the protection of the rights of any legal user of the water discharged by SRCSD. (*See*, AB 134, as introduced, Sec. 2 at p. 3, lines 24-27.)

(5) Remove proposed Water Code §1486(e), that would have applied to water flowing in underground streams. (*See*, AB 134, as introduced, Sec. 2 at p. 3, lines 34-35.)

(6) Remove the findings and declarations contained in Section 1 (a), (b), (d), (e) and (g).

NOR-CAL



BEVERAGE CO., INC.

2286 STONE BOULEVARD • WEST SACRAMENTO, CA 95691-4097 • (916) 372-0600 • FAX (916) 374-2605

March 21, 2011

Assembly Member Roger Dickinson
State Capitol, Room 3126
Sacramento, CA 95814

Re: Support for AB134

Dear Assemblymember Dickinson:

On behalf of Nor Cal Beverage Co., Inc., I applaud your bold efforts to protect the ratepayers of the Sacramento Regional County Sanitation District – as well as the economic health and well-being of the Sacramento region – by introducing AB134.

AB 134 would provide an important opportunity for SRCSD to apply for an appropriative water right for an equivalent amount of the high-quality treated water that it discharges to the Sacramento River. Selling high-quality recycled water would give SRCSD the ability to help offset the \$2 billion cost to comply with stringent permit mandates imposed by the Central Valley Regional Water Quality Control Board in December 2010. According to an analysis completed by the UOP Eberhardt School of Business, the overall economic impact to the Sacramento region of that \$2 billion hit over the next 30 years would be a loss of some \$7.4 billion in regional income, as well as nearly 30,000 jobs lost over the same period.

Because the volume of discharged recycled water to the Sacramento River today is on average less than 1-2% of the entire average flow rate of the Sacramento River, the water right sought by SRCSD would have a negligible effect on downstream water users. Moreover, the bill does not grant a water right to SRCSD. It simply clarifies SRCSD's right to apply for one with the State Water Resources Control Board (State Water Board). The State Water Board will consider the request and determine the conditions of an appropriation as they do now for all such requests.

Again, many thanks for your continued work to protect the ratepayers of SRCSD and the economic future of the entire region.

Sincerely,

Tim Wilbanks
Corporate Purchasing Manager
Nor Cal Beverage Co., Inc.

cc: Stan Dean, SRCSD
Craig Johns, California Resource Strategies
Terrie Mitchell, SRCSD



CALIFORNIA TEAMSTERS PUBLIC AFFAIRS COUNCIL

1127 ELEVENTH STREET, SUITE 501
SACRAMENTO, CALIFORNIA 95814

(916) 446-0291

FAX (916) 446-9321

E-MAIL: INFO@TEAMSTERCTPAC.ORG
WWW.CATEAMSTERS.COM

EXECUTIVE BOARD

FRANK ALOISE
CHAIRMAN - PRESIDENT
COUNCIL NO. 7
250 EXECUTIVE PARK BLVD., STE. 3100
SAN FRANCISCO, CA 94134
RANDY GAMMACK
CO-CHAIRMAN - PRESIDENT
JOINT COUNCIL NO. 42
818 OAK PARK ROAD, STE 250
COVINA, CA 91724

POLICY COMMITTEE JOINT COUNCIL NO. 7

MARTY FRATES
OAKLAND
RUDY HERNANDEZ
BAKERSFIELD
DAVE HAWLEY
REDDING
JIM TOBIN
SACRAMENTO
BILL HOYT
SAN JOSE
DALE ROBBINS
MARTINEZ
ROBERT MORALES
SAN FRANCISCO
GAYLORD PHILLIPS
MODESTO
DARRELL PRATT
FRESNO
SAM ROSAS
STOCKTON
SCOTT LUPO
VISALIA
LUCIO REYES
STOCKTON
RAFAEL MIRANDA
SANTA ROSA
ERNIE YATES
DALY CITY
JOE LANTHIER
SAN BRUNO
Y GONZALES
IAS
BROAD SEBRING
WATSONVILLE
LUPE JUAREZ
MODESTO
JACK BOOKTER
SAN FRANCISCO
JOINT COUNCIL NO. 42
ART CANTU
SAN DIEGO
MIKE BERGEN
BLOOMINGTON
BILL ELDER
VENTURA
LYNN SWENSON
SANTA MARIA
RON HERRERA
COVINA
LEO REED
N HOLLYWOOD
VICTOR TORRES
SAN DIEGO
ROBERT LENNOX
COVINA
JAIME VASQUEZ
SAN DIEGO
RICK MIDDLETON
CARSON
PAUL KENNY
LOS ANGELES
TODD MENDEZ
SAN DIEGO
ERIC TATE
LONG BEACH
RENE MEDRANO
LOS ANGELES
RAY WHITMER
BELLFLOWER
PATRICK KELLY
ORANGE
CHRIS GRISWOLD
MONTE
BRY BROAD
LEGISLATIVE DIRECTOR
MARSI NEWMAN
PUBLIC AFFAIRS ADMINISTRATOR
SHANE GUSMAN
LEGISLATIVE REPRESENTATIVE

To: All Members of the Assembly Committee on Water, Parks and Wildlife

From: Barry Broad
Shane Gusman
Marcie Berman

Date: March 21, 2011

Subject: AB 134 (Dickinson)-SUPPORT

On behalf of the California Teamsters Public Affairs Council, we are writing to express support for AB 134 by Assembly Member Roger Dickinson. This bill would ensure that Sacramento is able to negotiate bilateral agreements so as to sell treated water and relieve taxpayers and rate payers from the burden of subsidized water clean-up.

CTPAC supports this bill because it would enhance the financial integrity of our water system and, also, because it would protect the jobs of Teamster members who work in this industry.

CTPAC urges your "aye" vote on this bill.

cc: Assembly Member Dickinson



126

BOARD OF DIRECTORS

Brian Bowcock
David D. De Jesus
Carlos Goytia
Dan Horan
Bob Kuhn
John Mendoza
Joseph T. Ruzicka

GENERAL MANAGER/CHIEF ENGINEER

Richard W. Hansen, P.E.

March 21, 2011

Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

RE: Assembly Bill 134 (Dickinson): Sacramento Regional County Sanitation District – OPPOSE

Dear Assembly Member Dickinson:

On behalf of public agencies and business organizations throughout the state, the Three Valleys Municipal Water District regrets to inform you of our opposition to your bill, AB 134, which seeks exemptions from the traditional water right approval process at the State Water Resources Control Board (SWRCB) in order for the Sacramento Regional County Sanitation District (SRCSD) to market the sale of its effluent outside of its service area. Under existing law, treated effluent that cannot be recycled locally by SRCSD is discharged to the Sacramento River, and once those flows are returned to the river, SRCSD's rights to its treated effluent terminate. Under AB 134, some of effluent discharge that could be sold by SRCSD has historically been considered Delta inflow available for use and/or export downstream.

We are concerned that the bill would mandate that the SWRCB issue a permit if filed by SRCSD and would materially limit the SWRCB's discretion to consider impacts on downstream legal users of water and fish and wildlife. AB 134 would also set a precedent that could similarly exempt other dischargers from consideration of injuries to downstream water users and fish and wildlife that has long stood in the state's existing regulatory scheme.

We fully recognize and appreciate the challenges before the SRCSD ratepayers to invest in infrastructure improvements to address ecosystem and water quality challenges in the Sacramento-San Joaquin Delta. We stand ready to work with you and SRCSD to identify available state or federal funds to expedite the construction of treatment facilities to comply with the recently-adopted discharge permit for the SRCSD treatment plant.

Circumventing the SWRCB's normal water rights review process is not a workable solution. While we oppose AB 134 in its current form, we look forward to working with you to find mutually agreeable solutions to assisting in the finance of the necessary upgrades of the SRCSD wastewater facility and addressing the broader water system/ecosystem challenges in the Delta.

If you have any questions or comments regarding our position, please do not hesitate to contact me at 909-621-5568.

Sincerely,

Rick Hansen, P.E.
General Manager
Three Valleys Municipal Water District

cc: TVMWD Local Senators and Assembly Members

1021 E. Miramar Avenue • Claremont, California 91711-2052
Telephone (909) 621-5568 • Fax (909) 625-5470 • <http://www.threevalleys.com>

Alameda County Flood Control and Water Conservation District Zone 7
Alameda County Water District
Burbank Chamber
Burbank Water and Power
California Chamber of Commerce
California Municipal Utilities Association
Calleguas Municipal Water District
Castaic Lake Water Agency
Central City Association
Chambers of Commerce Alliance,
Ventura and Santa Barbara Counties
Chino Valley Chamber of Commerce
Coachella Valley Water District
Downey Chamber of Commerce
Eastern Municipal Water District
El Monte/South El Monte Chamber of Commerce
Fullerton Chamber of Commerce
Inland Empire Utilities Agency
Irvine Chamber of Commerce
Irvine Ranch Water District
Irwindale Chamber of Commerce
Kern County Water Agency
LaVerne Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Business Council
Metropolitan Water District of Southern California
Mojave Water Agency
Montclair Chamber of Commerce
Montebello Chamber
North Orange County Legislative Alliance
Orange County Business Council
Redondo Beach Chamber of Commerce & Visitors Bureau
Regional Chamber of Commerce-San Gabriel Valley
San Diego County Water Authority
San Fernando Chamber of Commerce
San Gabriel Valley Legislative Coalition Of Chambers
Sirni Valley Chamber of Commerce
Southern California Water Committee
Southwest California Legislative Council
The Greater Corona Valley Chamber of Commerce
Three Valleys Municipal Water District
United Chambers of the San Fernando Valley
Upland Chamber of Commerce
Upper San Gabriel Valley Municipal Water District
Valley Industry and Commerce Association (VICA)
Western Municipal Water District
Westlands Water District

March 22, 2011

Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

Re: Assembly Bill 134 (Dickinson) – **OPPOSE**
Sacramento Regional County Sanitation District
AS PROPOSED TO BE AMENDED

Dear Assembly Member Dickinson:

On behalf of the public agencies and business organizations noted below, we regret to inform you of our opposition to AB 134, as proposed to be amended, which seeks exemptions from the traditional water right approval process at the State Water Resources Control Board (SWRCB) in order for the Sacramento Regional County Sanitation District (SRCSD) to market the sale of its effluent outside of its service area.

Under existing law, treated effluent that cannot be recycled locally by SRCSD is discharged to the Sacramento River, and once those flows are returned to the river, SRCSD's rights to its treated effluent terminate. Some of the effluent discharge that could be sold by SRCSD under AB 134 has historically been considered Delta inflow available for use and/or export downstream.

We are concerned that the bill would create unworkable conflicts with existing water rights. The SRCSD effluent contains waters originating from the federal Bureau of Reclamation, for example, whose contracts specifically maintain rights to any waters that are discharged back into the Sacramento River system. AB 134's intent language mis-frames the outcome as a broad public benefit, potentially affecting in inappropriate ways, any future proceedings before SWRCB or possible court appeals.

Neutralizing the intent language and restricting AB 134's scope to existing law provides a much more workable framework. It is paramount that SWRCB maintain its full authority to consider impacts on downstream legal users of water and fish and wildlife.

We fully recognize and appreciate the challenges before SRCSD ratepayers to invest in infrastructure improvements to address ecosystem and water quality challenges in the Sacramento-San Joaquin Delta. We stand ready to work with you and SRCSD to identify available state or federal funds to expedite the construction of treatment facilities to comply with the recently-adopted discharge permit for the SRCSD treatment plant.

Circumventing the SWRCB's normal water rights review process is not a workable solution. We should note, however, that many other communities have had to do similar upgrades to their sewage treatment to meet Clean Water Act requirements without seeking to radically transform existing water rights law.

While we oppose AB 134 in its amended form, we look forward to working with you to find mutually agreeable solutions to assisting in the finance of the necessary upgrades of the SRCSD wastewater facility and addressing the broader water system/ecosystem challenges in the Delta.

Sincerely,



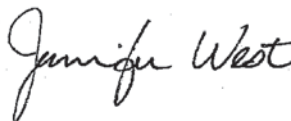
Jill Duerig, General Manager
Alameda County Flood Control and
Water Conservation District Zone 7



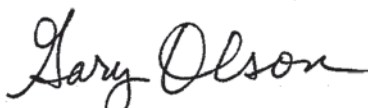
Valerie Nera
California Chamber of Commerce



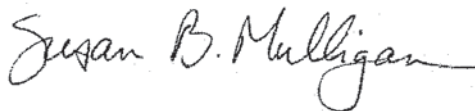
Walter L. Wadlow
General Manager
Alameda County Water District



Jennifer West
Director for Water
California Municipal Utilities Association



Gary Olson
President
Burbank Chamber



Susan Mulligan
General Manager
Calleguas Municipal Water District



Ron Davis
General Manager
Burbank Water and Power



Dan Masnada
General Manager
Castaic Lake Water Agency

Carol Schatz
President/CEO
Central City Association of Los Angeles

Richard Nichols
Executive Director
El Monte/South El Monte Chamber of
Commerce

Suzanne Scar, Chair
Chambers of Commerce Alliance of Ventura
& Santa Barbara Counties

Theresa Harvey
Executive Director
Fullerton Chamber of Commerce

Patti Arlt
Chair of the Board
Chino Valley Chamber of Commerce

Thomas A. Love
General Manager
Inland Empire Utilities Agency

Steve Robbins
General Manager-Chief Engineer
Coachella Valley Water District

Tallia Hart
CEO
Irvine Chamber of Commerce

Susan Nordin
Executive Director
Downey Chamber of Commerce

Paul D. Jones II
General Manager
Irvine Ranch Water District

Tony Pack
General Manager
Eastern Municipal Water District

Lisa Bailey
President/CEO
Irwindale Chamber of Commerce

James M. Beck
General Manager
Kern County Water Agency

Brian McNerney
President/CEO
La Verne Chamber of Commerce

Randy Gordon
President and CEO
Long Beach Area Chamber of Commerce

Gary Toebben
President/CEO
Los Angeles Area Chamber of Commerce

Mary Leslie
President
Los Angeles Business Council

Jeff Kightlinger
General Manager
Metropolitan Water District of
Southern California

Kirby Brill
General Manager
Mojave Water Agency

Darleen Curley
President/CEO
Montclair Chamber of Commerce

Andrea Wagg
CEO
Montebello Chamber

Marna Smeltzer
President/CEO
Redondo Beach Chamber of Commerce &
Visitors Bureau

Heidi L. Gallegos
Chief Executive Officer
Regional Chamber of Commerce -
San Gabriel Valley

Theresa Harvey
Executive Director
North Orange County Legislative Alliance

Kate Klimow
Vice President of Government and
Community Affairs
Orange County Business Council

Jonathan Clay
San Diego County Water Authority

Cynthia Schneider
Chair, Legislative Action Committee
The Greater Corona Valley Chamber
of Commerce

David R. Hernandez
Executive Director
San Fernando Chamber of Commerce

Richard Hansen
Gen. Mgr. /Chief Engineer
Three Valleys Municipal Water District

Arun D. Tolia
Chairman
San Gabriel Valley Legislative Coalition of
Chambers

Marian E. Jocz
Executive Director
United Chambers of the San Fernando Valle

Leigh Nixon
President/CEO
Simi Valley Chamber of Commerce

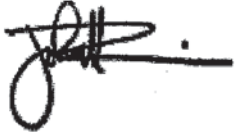
Sonnie Faires
President/CEO
Upland Chamber of Commerce

Richard Atwater
Executive Director
Southern California Water Committee

Shane Chapman
General Manager
Upper San Gabriel Valley Municipal
Water District

Gene Wunderlich
Chair
Southwest California Legislative Council

Stuart Waldman
President
Valley Industry and Commerce Association



John Rossi
General Manager
Western Municipal Water District



Thomas W. Birmingham
General Manager
Westlands Water District

cc: Members of the Assembly Water, Parks and Wildlife Committee
Tina Leahy, Consultant, Assembly Water, Parks and Wildlife Committee
✓ Doug Haaland, Assembly Republican Caucus

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN ASSEMBLY MARCH 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 134

Introduced by Assembly Member Dickinson
(Coauthor: Assembly Member Huber)
(Principal coauthor: Senator Steinberg)
(Coauthor: Senator Wolk)

January 12, 2011

An act to add Section 1486 to the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 134, as amended, Dickinson. Appropriation of water: Sacramento Regional County Sanitation District.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water.

Existing law requires the owner of a wastewater treatment plant to obtain the approval of the state board prior to making any changes in the point of discharge, place of use, or purpose of use of treated wastewater, and requires the state board to review the proposed changes in accordance with prescribed procedures.

This bill would authorize the Sacramento Regional County Sanitation District to file an application for a permit to appropriate a specified amount of water that is based on the volume of treated wastewater that the district discharges into the Sacramento River and recovers for reuse, *as specified*. The bill would ~~require~~ *authorize* the state board to grant a permit to appropriate that treated wastewater upon terms and conditions determined by the state board. ~~The bill would exempt from~~

~~the above-described approval and review requirements, the appropriation of water, and any change in the point of discharge, place of use, or purpose of use of treated wastewater, in accordance with a permit granted pursuant to the bill's provisions.~~

This bill would make legislative findings and declarations as to the necessity of a special statute for the Sacramento Regional County Sanitation District.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 ~~(a) The conservation of all available water resources requires~~
4 ~~the maximum reuse of recycled water in satisfying the requirements~~
5 ~~for beneficial uses of water.~~
- 6 ~~(b) Encouraging water conservation and water recycling are~~
7 ~~commonsense methods to make more efficient use of existing~~
8 ~~water supplies.~~
- 9 (c)
- 10 (a) The people of the State of California have a primary interest
11 in the development of facilities to ~~recycle wastewater~~ *produce*
12 *recycled water* to supplement existing surface water and
13 groundwater supplies and to assist in meeting the future water
14 requirements of the state.
- 15 ~~(d) Providing a more reliable water supply for the state includes~~
16 ~~the implementation of wastewater reclamation projects.~~
- 17 ~~(e) The Legislature has established statewide goals to recycle~~
18 ~~a total of seven hundred thousand acre-feet of water per year by~~
19 ~~the year 2000 and one million acre-feet of water per year by the~~
20 ~~year 2010.~~
- 21 (f)
- 22 (b) It is the intent of the Legislature that the state expeditiously
23 undertake all possible steps ~~to continue~~ to encourage the
24 development of water recycling facilities so that recycled water
25 may be made available to meet the growing water requirements
26 *supply needs* of the state.
- 27 ~~(g) It is the policy of the state that each region that depends on~~
28 ~~water from the Sacramento-San Joaquin Delta watershed should~~

1 ~~improve its regional self-reliance for water through investment in~~
2 ~~water recycling, and local and regional water supply projects.~~

3 (h)

4 (c) It is in the best interest of the people of the State of
5 California, in enacting this act, to provide an additional means for
6 the Sacramento Regional County Sanitation District to realize the
7 benefit of its production and discharge of high-quality recycled
8 water, and to provide a potential revenue stream to offset the high
9 costs associated with upgrades to the sanitation district's
10 wastewater treatment plant, to meet new wastewater treatment
11 requirements under the national pollutant discharge elimination
12 system permit issued by the California Regional Water Quality
13 Control Board, Central Valley.

14 SEC. 2. Section 1486 is added to the Water Code, to read:

15 1486. (a) The Sacramento Regional County Sanitation District,
16 and any successor thereto, with respect to treated wastewater
17 produced by the sanitation district that meets the requirements of
18 ~~the appropriate regional board~~ *California Regional Water Quality*
19 *Control Board, Central Valley*, and that is discharged into the
20 Sacramento River, may file an application for a permit to
21 ~~appropriate an amount of water that is equal to either of the~~
22 ~~following:~~

23 (1) ~~Up to the amount of treated wastewater that is discharged~~
24 ~~into the Sacramento River, if the treated wastewater is delivered~~
25 ~~directly for reuse prior to discharge.~~

26 (2) ~~Up appropriate up~~ to the amount of treated wastewater that
27 is discharged into the Sacramento River, less diminution by
28 seepage, evaporation, transportation, or other natural causes
29 between the point of discharge from the wastewater treatment plant
30 and the point of ~~recovery for reuse~~ *diversion out of the Sacramento*
31 *River or the Sacramento-San Joaquin Delta.*

32 (b) Upon application for a permit to appropriate water pursuant
33 to subdivision (a), the board ~~shall~~ *may* grant the permit subject to
34 the terms and conditions as in the board's judgment are necessary
35 for the protection of the rights of ~~others~~ *any legal user of the water.*

36 (c) ~~The appropriation of water, or any change in the point of~~
37 ~~discharge, place of use, or purpose of use of treated wastewater,~~
38 ~~in accordance with this section, shall not be subject to Section~~
39 ~~1211.~~

40 (d)

1 (c) Water appropriated in accordance with this section may be
2 sold or utilized for any beneficial purpose.

3 ~~(e) The right to the use of water granted by this section shall~~
4 ~~not include water flowing in underground streams.~~

5 SEC. 3. The Legislature finds and declares that a special law
6 is necessary and that a general law cannot be made applicable
7 within the meaning of Section 16 of Article IV of the California
8 Constitution because of the unique problems applicable to the full
9 utilization of the waters of the Sacramento River and the
10 Sacramento-San Joaquin Delta, into which treated wastewater
11 discharged by the Sacramento Regional County Sanitation District
12 flows.

13

14

15 **CORRECTIONS:**

16 **Text—Page 3.**

17

**EXECUTIVE BOARD**

Chairman: Bill Camarillo, Agramin
Treasurer: Joanne Coville, CSU Channel Islands
 Nan Drake, E.J. Harrison & Sons Inc
 Ron Greenwood, Global Energy & Technology Inc
 Mitchel Kahn, Nelson Camis Kahn & Sepulveda LLP
 Charles Maxey, California Lutheran University
 David Ossentjuk, Musick Peeler & Garrett LLP
 Mike Silacci, AT&T
 Howard Smith, Morgan Stanley Smith Barney

DIRECTORS

Will Berg, Oxnard Harbor District
 John Bibby, St. John's Regional Medical Center
 Dan Boughey, Robobank
 Ellen Brown, Volt Workforce Solutions
 Al Cardona, BMW of North America
 Jaime Casillas, VC Community College District
 John Chamberlain, Limoneira Company
 George Cagswell, Ventura County Star
 Tom Cohen, Alston + Bird LLP
 Henry Dubroff, Pacific Coast Business Times
 Tom Gaughan, Coastal Occupational Medical Group
 Susan Geiger, Vinlage Production California LLC
 Ron Golden, Chicago Title
 Bill Gomez, State Farm
 Rudy Gonzalez, Southern California Edison
 Scott Harris, Mustang Marketing
 Sue Hersberger, Aero Energy LLC
 Keith Hinkle, Pepperdine University
 Joe Kreutz, County Commerce Bank
 John Krist, Farm Bureau of VC
 John Kulwicz, Anderson Kulwicz Architects
 Rod Menzel, GreatWay Roofing
 Ron Rowen, RJR & Associates
 Joe Ruiz, Blue Cross of California
 David Shore, TWI Insurance Services LLC
 William Sims, Procter & Gamble Paper Products
 Dave Smith, United Way of Ventura County
 Sandy Smith, Sospa Consulting Inc
 Douglas Tapking, Area Housing Authority of VC
 Rob Westberg, Amgen Inc

HONORARY LIFETIME

Suzanne Chadwick
 Marc Charney
 Carolyn Leavens
 H. Edwin Lyon
 Stacy A. Roscoe

EX-OFFICIO

Patrick Ellis, Federated Chambers of VC
 William Buenger, World Affairs Council
 Captain David Sasek, Naval Base Ventura County
 Bruce Stenslie, EDC-VC
 Dick Thomson, VC Taxpayers Association

STAFF

Bill Buratto, President/CEO
 Darlene Ruz, Vice President

The voice of business since 1949!

VCEDA's Mission Statement: To advocate for policies, legislation and programs that stimulate business and a vital economy as the foundation for a vibrant quality of life in Ventura County.

March 23, 2011

Honorable Roger Dickinson
 California State Assembly
 State Capitol, Room 3126
 Sacramento, CA 95814

Re: Assembly Bill 134 (Dickinson) – **OPPOSE**
 Sacramento Regional County Sanitation District

Dear Assembly Member Dickinson:

On behalf of the Ventura County Economic Development Association, we regret to inform you of our opposition to your bill, AB 134, which seeks exemptions from the traditional water right approval process at the State Water Resources Control Board (SWRCB) in order for the Sacramento Regional County Sanitation District (SRCSD) to market the sale of its effluent outside of its service area. Under existing law, treated effluent that cannot be recycled locally by SRCSD is discharged to the Sacramento River, and once those flows are returned to the river, SRCSD's rights to its treated effluent terminate. Under AB 134, some of effluent discharge that could be sold by SRCSD has historically been considered Delta inflow available for use and/or export downstream.

We are concerned that the bill would mandate that the SWRCB issue a permit if filed by SRCSD and would materially limit the SWRCB's discretion to consider impacts on downstream legal users of water and fish and wildlife. AB 134 would also set a precedent that could similarly exempt other dischargers from consideration of injuries to downstream water users and fish and wildlife that has long stood in the state's existing regulatory scheme.

We fully recognize and appreciate the challenges before the SRCSD ratepayers to invest in infrastructure improvements to address ecosystem and water quality challenges in the Sacramento-San Joaquin Delta. We stand ready to work with you and SRCSD to identify available state or federal funds to expedite the construction of treatment facilities to comply with the recently-adopted discharge permit for the SRCSD treatment plant.

Circumventing the SWRCB's normal water rights review process is not a workable solution. While we oppose AB 134 in its current form, we look forward to working with you to find mutually agreeable solutions to assisting in the finance of the necessary upgrades of the SRCSD wastewater facility and addressing the broader water system/ecosystem challenges in the Delta.

Respectfully,

Bill Buratto
 President/CEO

CC: Assembly Members Brownley, Gorell, Smythe and Williams

FACT SHEET – AB 134 (Dickinson) [as amended March 23, 2011]

The Case for SRCSD’s Proposed Legislation to Recapture and Market Its High-Quality Recycled Water

Background

The need for a reliable water supply is vital to California’s economic viability. To help move toward sustainable management of its water supplies, the State has set ambitious water conservation, recycling and self-sustainability goals to be met by 2020. SRCSD has up to 180,000 acre feet per year of treated wastewater that could be marketed and reused to help the State supplement its water portfolio and help achieve its water recycling goals.

Key Contacts

Terrie Mitchell, Manager
Legislative & Regulatory Affairs
916/876-6092

Craig Johns, SRCSD Lobbyist
916/718-5490

What does AB 134 do? Does it automatically grant SRCSD a water right?

AB 134 does not automatically grant SRCSD a water right. It would simply enable SRCSD to file an application to the State Water Board to obtain such a water right permit for an equivalent amount of water that SRCSD treats and discharges to the Sacramento River. This would provide SRCSD the ability to market and sell its future high-quality water both in and out of the Sacramento region. AB 134 is specific and would apply only to the water SRCSD discharges to the Sacramento River, which accounts for less than 1-2% of the river’s average daily flows.

AB 134 is closely modeled after Water Code section 1485 (enacted in 1961, and amended in 1967), which specifically allows those who discharge wastewater to the San Joaquin River to file an appropriate water right application for the amount of water they discharge, minus calculated losses. The City of Stockton recently received a permit from the State Water Board pursuant to that legislation, allowing Stockton to divert water from the San Joaquin River.

Why is AB 134 necessary?

AB 134 will provide an additional procedural option for SRCSD to *potentially* realize the benefit of its treated wastewater discharges, by allowing SRCSD to obtain a water right permit for water attributable to its discharges of high-quality recycled water. SRCSD would then be able to use or market the water available under that water right permit to a willing buyer.

SRCSD’s ratepayers and the taxpayers of the Capitol Region may soon be required to finance up to \$2.1 billion to upgrade its wastewater treatment facilities, which will then produce some of the highest-quality recycled water in California – water pure enough for unrestricted agricultural and municipal recycled uses – or dedicated for Delta ecosystem needs. Revenue generated from the sale of this high-quality water could help offset some of the enormous costs associated with the upgrades at SRCSD’s wastewater treatment plant that will be necessary to meet the stringent treatment levels recently imposed by the Central Valley Regional Water Quality Control Board. Without other sources of funding, monthly sewer bills could triple for SRCSD ratepayers and new construction sewer hook-up fees could quadruple.

SRCSD has the desire and commitment to become a positive partner in Delta ecosystem restoration and water supply reliability – it now asks the Legislature to provide the self-help tools that SRCSD will need to make this goal a reality. AB 134 could provide a necessary revenue stream for SRCSD to develop recycled and new water supplies for use in and out of the Sacramento region, and help solve the issues now facing the Delta.

Does SRCSD have existing rights to its wastewater?

Yes. California Water Code sections 1210 and 1211 currently provide that the owner of a wastewater treatment plant holds the exclusive right to its treated wastewater, and can petition the State Water Board to change the point of discharge, place of use or purpose of use. SRCSD has invoked and confirmed its water rights through this petition process for its existing water recycling facilities. An existing State Water Board Order already confirms SRCSD's right to reuse up to 10 mgd of its existing discharge flows at certain places of use specified in the order.

Does the wastewater discharged by SRCSD constitute "return flows" that downstream users may acquire a right to?

No. Approximately 50-60% of the water collected and treated by SRCSD is derived from groundwater. Groundwater is considered "foreign water" and is legally distinct from surface water. As such, no downstream water right holder can legally claim a right to SRCSD's recycled water discharges that are derived from groundwater supply. Similarly, where water is diverted to storage away from a stream, a later release of this water from storage is not considered "natural" flow, but rather the flow of foreign waters. In this regard, water that passes through a sanitary sewer system and into a wastewater treatment plant is anything but natural. Through the treatment process, the water has changed significantly, both in its constituents and in the timing of its later return to a stream, after it has been temporarily stored in the sewer collection and treatment system. As a consequence, to the extent that water law concepts are applied, treated wastewater, regardless of its source, should *per se* be treated as foreign waters. Finally, many downstream water right holders contain the State Water Board's standard Permit Term 25, which provides that if the water available for use under the permit is wastewater, the permit "shall not be construed as giving any assurance that such supply will continue."

Would a water right application still need to be filed by SRCSD?

Yes. AB 134 would require SRCSD to file a water right application, which would be reviewed and potentially approved by the State Water Board. Interested parties may participate in that water right application and permitting process. Amendments to AB 134 (March 23) confirm the State Water Board's authority and discretion to condition any water right awarded to SRCSD to protect legal users of the water, including environmental needs of the Delta.

Will AB 134 affect the water rights of others?

No. AB 134 is designed to address a very specific situation related to SRCSD's recycled water and provides another procedural tool for SRCSD to sell and transfer water, attributable to its recycled water discharges, to other interested parties. Moreover, AB 134 would not cause any injury to other legal users of water because, like the 1961 legislation that it is modeled after, it allows the State Water Board to grant any water right permit "upon such terms and conditions as in the [State Water] Boards judgment are necessary for the protection of the rights of any legal user of the water."

Has SRCSD taken amendments to address concerns of the Water Contractors?

Yes. SRCSD has met with dozens of parties interested in AB 134, including many Southern California water suppliers. After these meetings, and in an effort to address concerns and objections raised, SRCSD asked Assembly Member Dickinson to make several, important changes to AB 134. On March 23, 2011, the bill was formally amended to address all of the substantive objections received. Most importantly, amended AB 134 confirms the authority and discretion of the State Water Board to review and, if appropriate, approve SRCSD's potential water right application, subject to terms and conditions the State Water Board may deem necessary to protect all legal users of the water, including environmental needs of the Delta.

March 24, 2011

Assembly Member Roger Dickinson
State Capitol, Room 3126
Sacramento, CA 95814

SUBJECT: Support for Assembly Bill 134 (Dickinson)

Dear Assembly Member Dickinson:

As you know, the wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCSD) wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

We hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,



Rob Kerth
Executive Director

cc: Darrell Steinberg, President pro-Tem
Assembly Member Jared Huffman, Chair, Water, Parks & Wildlife Committee
Stan Dean, District Engineer for SRCSD
Terrie Mitchell, Manager, SRCSD Legislative and Regulatory Affairs
Craig Johns, California Resource Strategies



CITY OF WEST SACRAMENTO

March 28, 2011

CITY HALL
1110 West Capitol Avenue
West Sacramento, CA 95691

City Council
City Manager
City Clerk
Information Technology
(916) 617-4500

Community Development
Planning/
Development Engineering
(916) 617-4645
Building
(916) 617-4683
Redevelopment
(916) 617-4595
Housing & Community
Investment
(916) 617-4555
Economic Development
(916) 617-4880

Public Works
Operations
(916) 617-4850
Engineering
(916) 617-4845
Flood Protection
(916) 617-4845

Finance
Administration
(916) 617-4575
Refuse & Recycling
(916) 617-4590
Utility Billing
(916) 617-4589

Human Resources
(916) 617-4587

Parks & Recreation
(916) 617-4620

FIRE
2040 Lake Washington Blvd.
West Sacramento, CA 95691
(916) 617-4600
Fax (916) 371-5017

POLICE
550 Jefferson Boulevard
West Sacramento, CA 95605
(916) 617-4900
Code Enforcement
(916) 617-4925

PUBLIC WORKS
Operations
1951 South River Road
West Sacramento, CA 95691
(916) 617-4850

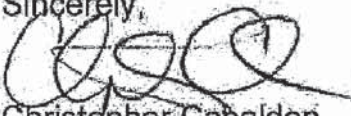
Assembly Member Roger Dickinson
P.O. Box 942849, Room 3126
Sacramento, CA 94249-0009

Dear Assembly Member Dickinson,

As you are aware, the Central Valley Regional Water Quality Control Board issued a new wastewater discharge permit to Sacramento Regional County Sanitation District (SCRSD), in December of 2010. The permit establishes new standards for treatment of SCRSD wastewater discharges to the Sacramento River in order to significantly reduce potential impacts of the discharge on the Delta ecosystem. As a result, SRCSD estimates that ratepayers may soon be required to spend an estimated \$2 billion to upgrade the District's wastewater treatment facilities. Without another source of funding, monthly sewer bills could triple for ratepayers and new construction sewer hook-up fees could quadruple.

The City of West Sacramento supports Assembly Bill 134 which you authored to enable the District to pursue new revenue opportunities that will minimize the burden on SCRSD ratepayers. When the upgrades are complete SCRSD's treatment plant will produce some of the highest quality and purest recycled water. Your bill establishes a path for the District to secure a water rights permit to sell water rights in and outside the region and advances the goals of Delta ecosystem restoration and water system reliability. Moreover, the bill provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,

Christopher Cabaldon
Mayor, City of West Sacramento

cc: Darrell Steinberg, President pro Tem
Assembly Member Jared Huffman, Chair, Water, Parks & Wildlife Committee
Stan Dean, District Engineer for SRCSD
Terrie Mitchell, Manager, SRCSD Legislative and Regulatory Affairs
Craig Johns, California Resource Strategies





CITY OF
WEST SACRAMENTO

CITY HALL

1110 West Capitol Avenue
West Sacramento, CA 95691

March 28, 2011

City Council
City Manager
City Clerk
Information Technology
(916) 617-4500

Community Development

Planning/
Development Engineering
(916) 617-4645
Building
(916) 617-4683
Redevelopment
(916) 617-4535
Housing & Community
Investment
(916) 617-4555
Economic Development
(916) 617-4880

Senator Darrell Steinberg
State Capitol, Room 205
Sacramento, CA 95814

Dear Senator Steinberg,

Public Works

Operations
(916) 617-4850
Engineering
(916) 617-4645
Flood Protection
(916) 617-4645

As you are aware, the Central Valley Regional Water Quality Control Board issued a new wastewater discharge permit to Sacramento Regional County Sanitation District (SCRSD) in December of 2010. The permit establishes new standards for treatment of SCRSD wastewater discharges to the Sacramento River in order to significantly reduce potential impacts of the discharge on the Delta ecosystem. As a result, SRCSD estimates that ratepayers may soon be required to spend an estimated \$2 billion to upgrade the District's wastewater treatment facilities.

Finance

Administration
(916) 617-4575
Refuse & Recycling
(916) 617-4590
Utility Billing
(916) 617-4589

These costs will create a significant economic burden on residents, businesses and industry in the Sacramento region. Without another source of funding, monthly sewer bills could triple for ratepayers and new construction sewer hook-up fees could quadruple.

Human Resources

(916) 617-4567

Parks & Recreation

(916) 617-4620

FIRE

2040 Lake Washington Blvd.
West Sacramento, CA 95691
(916) 617-4600
Fax (916) 371-5017

The City of West Sacramento supports Senate Bill 52, which you authored to provide state financial assistance for the upgrades to SCRSD facilities. Senate Bill 52 recognizes that the costs of improving water quality and protecting beneficial uses in the Delta are a shared responsibility that should be borne by all beneficiaries of Delta water resources. Revenue to finance SRCSD facility improvements must be generated through a combination of rate and fee increases, opportunities to market treated waste water and state and federal assistance.

POLICE

550 Jefferson Boulevard
West Sacramento, CA 95605
(916) 617-4900

Code Enforcement

(916) 617-4925

PUBLIC WORKS

Operations
1951 South River Road
West Sacramento, CA 95691
(916) 617-4850

www.cityofwestsacramento.org

Thank you for sponsoring this legislation in support of the Sacramento region.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cabaldon', with a stylized flourish at the end.

Christopher Cabaldon
Mayor, City of West Sacramento

cc: Assembly Member Jared Huffman, Chair, Water, Parks & Wildlife
Committee
Assembly Member Roger Dickinson
Stan Dean, District Engineer for SRCSD
Terrie Mitchell, Manager, SRCSD Legislative and Regulatory Affairs
Craig Johns, California Resource Strategies



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

1215 K Street, Suite 2290 • Sacramento, CA 95814 • TEL: (916) 446-0388 – FAX: (916) 231-2141

March 29, 2011

The Honorable Roger Dickinson
California State Assembly
State Capitol
Sacramento, CA 95814

SUBJECT: AB 134 (DICKINSON) RE: SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT-- SUPPORT

Dear Assemblymember Dickinson,

The California Association of Sanitation Agencies (CASA) is pleased to support your AB 134, which would allow the Sacramento Regional County Sanitation District (SRCSD) to seek a water right to recoup the value of highly treated recycled water. CASA is a statewide association of local public agencies providing wastewater collection, treatment and water recycling services to millions of Californians.

Current law provides that a wastewater treatment plant has the exclusive right to the wastewater entering its facility. AB 134 would simply provide that SRCSD has the right to file a water rights application for an amount of water equivalent to the volume of its discharge. The legislation would confirm that SRCSD may file for a water right permit to potentially obtain an ownership interest in at least some portion of the water discharged. This is very similar to a provision of existing law, which allows the City of Stockton and others who discharge treated effluent to the San Joaquin River to file an appropriative water right application for the amount of water they discharge, minus calculated loss.

While critical to California's water supply future, highly treated recycled water is an extremely costly commodity to produce. CASA endorses the central concept underlying AB 134: that wastewater agencies and their ratepayers, who expend significant local resources to produce the water, should have the ability to recoup a portion of those costs from users of the water. For these reasons, we are pleased to support your AB 134.

Sincerely,

Michael F. Dillon
CASA Lobbyist



Campbell Soup Supply Company L.L.C
6200 Franklin Blvd.
Sacramento, CA 95824-3499

March 29, 2011

The Honorable Roger Dickinson
California General Assembly
510 Bercut Drive, Ste. C
Sacramento, CA 95811

Dear Assemblyman:

On behalf of the Campbell Soup Company, thank you your leadership to protect the ratepayers of the Sacramento Regional County Sanitation District – as well as the economic health and well-being of the Sacramento region – by introducing AB134.

AB 134 would provide an important opportunity for SRCSD to apply for an appropriate water right for an equivalent amount of the high-quality treated water that it discharges to the Sacramento River. Selling high-quality recycled water would give SRCSD the ability to help offset the \$2 billion cost to comply with stringent permit mandates imposed by the Central Valley Regional Water Quality Control Board in December 2010. According to an analysis completed by the UOP Eberhardt School of Business, the overall economic impact to the Sacramento region of that \$2 billion hit over the next 30 years would be a loss of some \$7.4 billion in regional income, as well as nearly 30,000 jobs lost over the same period.

Because the volume of discharged recycled water to the Sacramento River today is on average less than 1-2% of the entire average flow rate of the Sacramento River, the water right sought by SRCSD would have a negligible effect on downstream water users. Moreover, the bill does not grant a water right to SRCSD. It simply clarifies SRCSD's right to apply for one with the State Water Resources Control Board (State Water Board). The State Water Board will consider the request and determine the conditions of an appropriation as they do now for all such requests.

We remain opposed to the decision by the Central Valley Regional Water Quality Control Board to approve an unreasonably restrictive wastewater discharge permit for SRCSD, because it was neither based on sound science nor an appropriate cost/benefit analysis. Again, many thanks for your continued work to protect the ratepayers of SRCSD and the economic future of the entire region.

Sincerely,

A handwritten signature in black ink that reads "Brett Buatti". The signature is written in a cursive, slightly slanted style.

Brett Buatti
Vice President – Manufacturing, Sacramento Operations

cc: Stan Dean, SRCSD



①

March 30, 2011

Quality Housing • Ethics • Professionalism

The Honorable Roger Dickenson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

The CAA Network

- California Apartment Association
- Apartment Association of Greater Inland Empire
- CAA Central Valley
- CAA Contra Costa
- CAA Greater Fresno
- CAA Los Angeles
- CAA Napa/Solano
- CAA San Diego
- CAA Tri-County
- Income Property Association of Kern
- Mariposa Income Property Association
- Coast Rental Housing Association
- Rental Housing Association of Northern Alameda County
- Rental Housing Association of Sacramento Valley
- Rental Housing Owners Association of Southern Alameda County
- San Francisco Apartment Association
- San Joaquin County Rental Property Association
- South Coast Apartment Association

RE: AB 134 (Dickenson) – Sacramento Sanitation District - SUPPORT

Dear Assembly Member Dickenson:

On behalf of the members of the California Apartment Association (CAA), I am writing to inform you that CAA has taken a support position on AB 134, legislation that authorizes the Sacramento Regional County Sanitation District (SRCSD) to apply to the State Water Board for a permit to appropriate water produced by the district.

This legislation is critical to all ratepayers in Sacramento County, particularly rental property owners and developers. AB 134 will help SRCSD pay for billions of dollars of upgrades imposed on the district. Without AB 134, property owners will see an estimated 300 percent increase in their water rates. Such increases ultimately hit struggling tenants the hardest.

In addition, multifamily developers will see a connection fees on potential new development increase by tens of thousands of dollars, effectively stopping all development in a region of the state hit hardest by the recession.

Without outside funding, the required upgrades amount to a multi-billion tax on property owners, tenants and consumers in Sacramento. This will only further exacerbate an already fragile economy and a prolonged housing crisis.

The California Apartment Association is the largest statewide rental housing trade association in the country, representing owners and managers who are responsible for over 2 million rental units throughout the State of California.

Sincerely,

CALIFORNIA APARTMENT ASSOCIATION

By
Shant Apekian
Vice President of Public Affairs

cc: Assembly Water, Parks, and Wildlife Committee
Assembly Republican Office of Policy





Vision for the Future

Association of California Water Agencies

Association of California Water Agencies
910 K Street, Suite 100,
Sacramento, California 95814-3577
916.441.4545 FAX 916.325.4849

Hall of the States
400 N. Capitol St., N.W., Suite 357 South,
Washington, D.C. 20001-1512
202.434.4760 FAX 202.434.4763
www.acwa.com

March 30, 2011

The Honorable Jared Huffman
California State Assembly
State Capitol, Room 3120
Sacramento, CA 95814

RE: Assembly Bill 134 (Dickinson) – OPPOSE

Dear Chair Huffman:

On behalf of the Association of California Water Agencies (ACWA), I am writing to express ACWA’s opposition to AB 134 (Dickinson), relating to and sponsored by the Sacramento Regional County Sanitation District (SRCSD).

ACWA’s State Legislative Committee recently met with SRCSD representatives to learn more about the bill. ACWA understands the SRCSD is seeking changes to the normal water rights process in order to sell its effluent water rights outside its service area. ACWA also recognizes the challenges the SRCSD faces as it works to comply with the National Pollutant Discharge Elimination System (NPDES) permit that the Central Valley Regional Water Quality Control Board recently issued. However, ACWA is concerned that the bill would create unworkable conflicts with existing water rights and diminish the State Water Resources Control Board’s authority to consider impacts to fish and wildlife.

For these reasons, ACWA opposes AB 134 and requests that you vote “NO” when it is heard in the Assembly Water, Parks and Wildlife Committee on April 5, 2011.

Sincerely,

Cindy Tuck
State Legislative Director

CT: rm

cc: The Honorable Roger Dickinson
Members, Assembly Water, Parks and Wildlife Committee
Tina Cannon Leahy, Principal Consultant, Assembly Water, Parks and Wildlife Committee
Doug Haaland, Consultant, Assembly Republican Caucus
Gareth Elliott, Legislative Secretary, Office of Governor Jerry Brown



County of Yolo

625 Court Street, Room 204 Woodland, CA 95695-1268 (530) 666-8195

District Office: 500 Jefferson Blvd. Bldg A
West Sacramento, CA 95691
(916) 375-6443 Office
(916) 375-6442 Fax

Mike McGowan
SUPERVISOR, FIRST DISTRICT

March 31, 2011

Assemblyman Roger Dickinson
State Capitol, Room 3126
Sacramento, CA 95814


Assemblyman Dickinson:

We support AB 134 related to the Sacramento Regional County Sanitation's District ability to appropriate treated wastewater and potentially sell that water to willing buyers. We understand the need of the District to fully utilize all available sources of revenue to meet its obligations under the new wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board. As you know, the City of West Sacramento is served by the Sacramento Regional County Sanitation District. We therefore greatly appreciate your efforts to minimize the impact of the permit requirements on ratepayers.

We are recommending a position of support to the full Yolo County Board of Supervisors on April 12th. Thank you for your leadership on this important issue.

Sincerely,


Mike McGowan
Supervisor, 1st District


Jim Provenza
Supervisor, 4th District

cc: Senator Lois Wolk
Assemblywoman Mariko Yamada
Assemblyman Jim Nielsen



Central Contra Costa Sanitary District

Protecting public health and the environment

5019 Imhoff Place, Martinez, CA 94553-4392

FAX: (925) 676-7211

March 31, 2011

Assembly Member Roger Dickinson
State Capitol, Room 3126
Sacramento, CA 95814

JAMES M. KELLY
General Manager

KENTON L. ALM
Counsel for the District
(510) 808-2000

ELAINE R. BOEHME
Secretary of the District

SENT VIA FACSIMILE: 916-319-2109

SUBJECT: AB 134 (DICKINSON)
RE: SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT - SUPPORT

Dear Assembly Member Dickinson:

The Central Contra Costa Sanitary District (District) is pleased to support your AB 134, which would allow the Sacramento Regional County Sanitation District (SRCSD) to seek a water right to recoup the value of highly treated recycled water. The District has taken a leadership role in developing and promoting recycled water projects in our service area in central Contra Costa County. This year we expect to supply about 600 million gallons of recycled water for landscape irrigation and commercial uses, and we plan to continue to expand our recycled water program in the coming years.

Current law provides that a wastewater treatment plant has the exclusive right to the wastewater entering its facility. AB 134 would simply provide that SRCSD has the right to file a water rights application for an amount of water equivalent to the volume of its discharge. The legislation would confirm that SRCSD may file for a water right permit to potentially obtain an ownership interest in at least some portion of the water discharged. This is very similar to a provision of existing law, which allows the City of Stockton and others who discharge treated effluent to the San Joaquin River to file an appropriate water right application for the amount of water they discharge, minus calculated loss.

While critical to California's water supply future, highly treated recycled water is an extremely costly commodity to produce. The District endorses the central concept underlying AB 134; that wastewater agencies and their ratepayers, who expend significant local resources to produce the water, should have the ability to recoup a portion of those costs from users of the water. For these reasons, we are pleased to support your AB 134.

Sincerely,

James M. Kelly
General Manager

JMK:db



cc: Central Contra Costa Sanitary District Board of Directors
Darrell Steinberg, Senate President Pro Tem
Via Facsimile 916-323-2263
Assembly Member Jared Huffman, Chair, Assembly Water, Parks & Wildlife Committee
Via Facsimile 916-319-2196
Tina Leahy, Consultant, Assembly Water, Parks & Wildlife Committee
Via Facsimile 916-319-2196
Stan Dean, District Engineer, SRCSD
Via Email deans@sacsewer.com
Terrie Mitchell, Manager, SRCSD Legislative and Regulatory Affairs
Via Email mitchellt@sacsewer.com
Craig Johns, California Resource Strategies
Via Email cjohns@calrestrats.com
David Gonsalves, Chief of Staff, Assembly Member Roger Dickinson
Via Facsimile 916-319-2109
Kathryn Dresslar, Chief of Staff, Senator Darrell Steinberg
Via Facsimile 916-323-2263
Craig Johns, Lobbyist, SRCSD
Via Facsimile 916-782-2788
Ann Farrell, Director of Engineering, Central Contra Costa Sanitary District
Don Berger, Associate Engineer, Central Contra Costa Sanitary District



1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352
(209) 526-7373

March 31, 2011

faked

The Honorable Roger Dickinson
California State Assembly
PO Box 942849
Sacramento, CA 94249-0009

Re: AB 134
Position: Oppose

Dear Mr. Dickinson:

On behalf of the Modesto Irrigation District which provides water and electrical service to the residents of northern Stanislaus County, we write to inform you of our opposition to AB 134, which seeks exemptions from the traditional water rights approval process at the State Water Resources Control Board ("SWRCB") in order for the Sacramento Regional County Sanitation District ("SRCSD") to market the sale of its effluent outside of its service area.

Under existing law, treated effluent that cannot be recycled locally by SRCSD is discharged to the Sacramento River and once those flows are returned to the river, SRCSD's rights to its treated effluent terminate. Some of the effluent discharge that could be sold by SRCSD under AB 134 has historically been considered Delta inflow available for use and/or export downstream.

We are concerned that the bill would create unworkable conflicts with existing water rights. AB 134's intent language mischaracterizes the outcome as a broad public benefit, potentially affecting in inappropriate ways, any future proceedings before SWRCB or possible court appeals.

Circumventing the SWRCB's normal water rights review process is not an appropriate solution set. Many communities in the Central Valley have had to undertake similar upgrades to their sewage treatment to meet Clean Water Act requirements without seeking to radically transform existing water rights law.

Thank you for your consideration of our views on your legislation.

Cordially,

ALLEN SHORT
General Manager

cc: Honorable Chair and Members, Assembly Committee on Water, Parks, and Wildlife
Stanislaus County Legislative Delegation
Mr. Pete Price
Ms. Diane Colborn
Ms. Tina Cannon Leahy
Mr. Doug Haaland
Mr. Rob Egel
The Gualco Group, Inc.



April 1, 2011

Via Hand Delivery

The Honorable Roger Dickinson
California State Assembly Member
Capitol Office - Room 3126
Sacramento, CA 95814

AB 134 (Dickinson) – Oppose

Dear Assembly Member Dickinson:

On behalf of WaterReuse California, I am writing to express our concerns regarding AB 134. We applaud your leadership and vision for water recycling in California, and while we must oppose AB 134 as amended March 23, 2011, we agree that:

- Recycled water is a resource of critical importance to the State and the only growing water supply in California;
- Recycled water projects are most successful when all beneficiaries, including wastewater interests, water interests and environmental interests contribute to the development of projects;
- California's laws related to both water quality and water supply can impede the development of recycled water systems.

WaterReuse California has worked for nearly thirty years to improve the legal and regulatory system surrounding recycled water. However, as important as the development of recycled water is for California, our organization cannot support a narrowly written, potentially precedential change in the entire water rights system for the benefit of a single public agency.

WaterReuse California recognizes that recycled water legislation cannot be successful unless the concerns of all stakeholders in the water community are addressed in the broader context of statewide discharge and water rights considerations rather than the narrow context of one particular discharger.

While we understand and empathize with the fiscal challenges facing Sacramento Regional Sanitation District (District) and its customers, those challenges cannot be resolved by disenfranchising the legitimate interests of current water rights holders downstream of the District's discharge and by creating a precedent that would potentially lead to

Recycling Water to Meet the World's Needs

International Office: 1199 North Fairfax Street, Suite 410, Alexandria, Virginia 22314 • 703-684-2409 • 703-548-3075 (fax)

California Section Office: 915 L Street, Suite 1000 • Sacramento, California 95814 • 916 669-8401 • 916 720-0331 (fax)

www.watereuse.org

April 12, 2011

Page 2

disenfranchisement of legitimate water rights holders throughout the state.

WaterReuse California has a strong history of working with stakeholders to advance sound public policy for recycled water. Our commitment has been demonstrated by our leadership on the State Water Board's Recycled Water Policy; our partnership with the Planning and Conservation League on SB 918 (Pavley) in 2010; and the creation of the state's multi-agency Recycled Water Task Force in 2000.

WaterReuse California stands willing to work with your office, the bill's sponsor, and other stakeholders to develop a sound, comprehensive strategy for addressing our shared goal of advancing an affordable, high-quality, recycled water supply. Unfortunately, in its current form, AB 134 does not achieve this goal.

Sincerely,



Dave Smith, Ph.D

Managing Director

WaterReuse California

CC: The Honorable Jared Huffman, Chair of the Water, Parks, and Wildlife Committee
Members of the Water, Parks, and Wildlife Committee
Diane Colborn, Chief Consultant of the Water, Parks, and Wildlife Committee
Tina Cannon Leahy, Principal Consultant of the Water Parks, and Wildlife Committee

Recycling Water to Meet the World's Needs

International Office: 1199 North Fairfax Street, Suite 410, Alexandria, Virginia 22314 • 703-684-2409 • 703-548-3075 (fax)

California Section Office: 915 L Street, Suite 1000 • Sacramento, California 95814 • 916 669-8401 • 916 720-0331 (fax)

www.watereuse.org

Congress of the United States
House of Representatives
Washington, DC 20515-0505

April 4, 2011

The Honorable Roger Dickinson
Assemblymember
State of California
P.O. Box 942849
Sacramento, CA 94249-0009

Dear Assemblymember Dickinson:

I write in support of your Assembly Bill 134. I understand that AB 134 would establish a path for the Sacramento Regional County Sanitation District (SRCSD) to file an application for an appropriative water rights permit. This permit would allow SRCSD to use or sell the water rights in and outside the Sacramento region. This water right could help alleviate the financial burden that a new wastewater treatment plant will pose to Sacramento area ratepayers.

As you know, the SRCSD is facing significant new mandates on their wastewater treatment plant as a result of a permit issued by the Central Valley Regional Water Quality Control Board in December 2010. Sacramento area ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment plant. These costs will create a significant economic burden on residents, businesses and industry in the Sacramento region. This economic burden could not come at a more difficult time as our local economy continues to struggle from the impacts of the recent recession.

I am pleased to support AB 134.

Sincerely,



DORIS O. MATSUI
Member of Congress

Date of Hearing: April 5, 2011

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Jared Huffman, Chair
AB 134 (Dickinson) – As Amended: March 23, 2011

SUBJECT: Appropriation of treated wastewater

SUMMARY: Allows the Sacramento Regional County Sanitation District (SRCSD) to apply for a permit to appropriate an amount of water up to the amount of discharged wastewater. Specifically, this bill:

- 1) Declares the benefit of water recycling while also finding that it is in the best interest of the people of California to allow the SRCSD to benefit financially from its production and discharge of high-quality recycled water in order to offset the costs associated with a mandatory wastewater treatment plant upgrade.
- 2) Allows the SRCSD to file an application for a permit to appropriate an amount of water equal to the amount of treated wastewater discharged, less carriage losses, if the water is rediverted from the Sacramento River or Sacramento-San Joaquin Delta.
- 3) Declares a special law is necessary due to the unique problems applicable to full utilization of the waters of the Sacramento River into which the SRCSD discharges treated wastewater.

EXISTING LAW

- 1) Provides that the owner of a wastewater treatment plant shall hold the exclusive right to the treated wastewater.
- 2) Requires approval from the State Water Resources Control Board for a change in the point of discharge, place of use, or purpose of use of treated wastewater, unless such change does not decrease flow in any portion of a watercourse.
- 3) Protects wastewater which has been introduced into the watercourse with the intention of maintaining or enhancing fishery, wildlife, recreational or other instream beneficial uses from being treated as abandoned and subject to appropriation by others.

FISCAL EFFECT: Unknown

COMMENTS:

The importance of the Sacramento-San Joaquin Delta Estuary (Delta) as a regional, state and national treasure and an integral part of an ecosystem which is home to more than 750 wildlife species and more than 120 species of fish is well documented. Equally well documented has been the precipitous decline of its fisheries including, but not limited to, fish species listed under both the Federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) such as Delta smelt, winter-run Chinook salmon and spring-run Chinook salmon.

There have been many reasons for this decline including the effects of the Central Valley Project (CVP) and State Water Project (SWP). The CVP/SWP, which operate in a coordinated fashion, have two huge pumping plants located near one another in the south of the Delta which export water primarily to Central Valley agriculture and southern California cities. Collectively, these pumping plants change the overall hydrodynamics of the Delta including exerting a pull so strong they force two rivers, Old River and Middle River, to cease to flow westward towards the San Francisco Bay and instead run backwards towards the pumps themselves. This reverse flow causes direct losses of fish, larva and eggs due to entrainment (being drawn in to the pumping facilities) and impingement (being trapped against screens) as well as indirect losses due to straying, predation, and loss of food production.

The killing of ESA and CESA listed species is legally prohibited without a permit. Thus, the CVP/SWP are required to obtain permits for their operations. Because the permits are specific to CVP/SWP operations, they focus on measures to try to minimize the operational impacts of the projects on fish, including by limiting Old and Middle Rivers' reverse flow during seasons when the fish species are most vulnerable (such as breeding). While the permits do not cause the pumps to cease operating, they affect the maximum amount of water than can be exported, particularly from December through June. In addition, maximum export pumping is constrained by Army Corps of Engineers permits and the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan because, among other factors, the outflow of water through the Delta is a hydraulic barrier to salinity coming in from the ocean.

As part of the Bay Delta Conservation Plan (BDCP) process, a stakeholder-driven effort to obtain new 50 year permits for CVP/SWP operations, the agencies that contract with the federal Bureau of Reclamation and State Department of Water Resources for CVP/SWP export supplies have increasingly focused on the possible role of other "stressors" besides the water projects in the fish declines. In particular, they have contributed to studies analyzing ammonia as affecting the Delta food web and fish species and called for more stringent permits on discharges into the Sacramento River from the Sacramento Regional Wastewater Treatment Plant (Treatment Plant) owned and operated by SRCSD. On December 9, 2010 the Central Valley Regional Water Quality Control Board issued a new Waste Discharge Requirement for the SRCSD Treatment Plant which, among its provisions, requires increased wastewater filtration and limits ammonia levels.

To date, SRCSD's wastewater discharges have formed part of the water supply exported by the CVP/SWP. This is because, while most water permits are for quantifiable amounts of water to be diverted at a specific location during a specific time period for a specific place of use, the CVP/SWP Delta pumping plants take all the water in the system that they are capable of diverting constrained by physical limitations (the size of the pumps and canals) and legal standards. In some years this has allowed them to deliver both contracted-for amounts of water plus amounts in excess of those contracts.

SRCSD's concerns over its wastewater as export supply were exacerbated by the BDCP proposal to build five new intakes on the Sacramento River directly downstream of the SRCSD Treatment Plant's outfall. Collectively, these proposed intakes are almost fifty times larger than any other screened diversion in the Delta and would be used to export water around the Delta via a new peripheral canal. This location and timing of the BDCP proposal has caused SRCSD to feel that they are being compelled to provide drinking water quality water for current and future export

and to seek a mechanism to require the CVP/SWP contractors, or any other entity which wishes to benefit from this new high-quality water supply, to pay for it.

Support Arguments: SRCSD and other supporters of this bill assert that Treatment Plant upgrades will cost up to \$2 billion and that a multi-faceted approach is needed at the "local, state and federal level to minimize the burden on the Sacramento Region." They point out this bill follows an approach that was established in 1961 for the San Joaquin River and that the amended version of the bill provides assurances that are necessary to protect other legal users of water, including the environment.

Opposition Arguments: Opponents state that some of the effluent discharge that could be sold by SRCSD under this bill "has historically been considered Delta inflow available for use and/or export downstream." They state that "many other communities have had to do similar upgrades to their sewage treatment to meet Clean Water Act requirements without seeking to radically transform existing water rights law."

Issues and Suggested Amendments: The Sacramento Area Council of Governments, in a *Background Report on Sacramento Area Resources* quoted figures showing that while the State average for water consumption is about 165 gallons per capita per day (GPCD), with Los Angeles around 135 GPCD, some purveyors around the Sacramento region could be consuming 200 GPCD and even as much as 400 GPCD. This is due to the low-cost water generally prevalent in the Sacramento region. If this bill were to allow the total volume of wastewater generated through inefficient uses to become a valuable commodity, that could act as a disincentive to conservation.

SB 7 (Steinberg) Chapter 4, Statutes of 2009-10 Seventh Extraordinary Session requires the state to achieve a 20% reduction in urban per capita water use by December 31, 2020. The author may wish to consider an amendment recognizing the need for increased conservation in the Sacramento Region and limiting the total volume of wastewater that could be subject to appropriation under this bill.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
CA Association of Sanitation Agencies
California Teamsters Public Affairs Council
Campbell Soup Company
Central Contra Costa Sanitary District
City of Citrus Heights
City of Elk Grove
City of Rancho Cordova
City of Sacramento
City of West Sacramento

Downtown Sacramento Partnership
Jim Provenza, Yolo County Supervisor
Marriott Cal Expo Properties
Midtown Business Association
Mike McGowan, Yolo County Supervisor
Nor-Cal Beverage Co., Inc.
North State Building Industry Association
Sacramento County Board of Supervisors
Sacramento Metro. Chamber of Commerce
Sacramento Regional Co. Sanitation District

Opposition

Alameda County Flood Control and Water
Conservation District Zone 7
Alameda County Water District

Association of CA Water Agencies
Burbank Chamber
Burbank Water and Power

California Chamber of Commerce
California Municipal Utilities Assoc.
Calleguas Municipal Water District
Castaic Lake Water Agency
Central City Association
Chambers of Commerce Alliance,
Ventura and Santa Barbara Counties
Chino Valley Chamber of Commerce
City of Corona (unless amended)
Coachella Valley Water District
Contra Costa Water District (unless amended)
Downey Chamber of Commerce
Eastern Municipal Water District
EI Monte/South EI Monte Chamber of
Commerce
Friant Water Authority
Fullerton Chamber of Commerce
Inland Empire Utilities Agency (unless amended)
Irvine Chamber of Commerce
Irvine Ranch Water District
Irwindale Chamber of Commerce
Kern County Water Agency
LaVerne Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Business Council
Metropolitan Water District of So. California
Mojave Water Agency

Montclair Chamber of Commerce
Montebello Chamber
North Orange County Legislative Alliance
Orange County Business Council
Redondo Beach Chamber of Commerce &
Visitors Bureau
Regional Chamber of Com/-San Gabriel
Valley
San Diego County Water Authority
San Fernando Chamber of Commerce
San Gabriel Valley Legislative Coalition of
Chambers
Simi Valley Chamber of Commerce
Southern California Water Committee
Southwest California Legislative Council
The Greater Corona Valley Chamber of
Commerce
Three Valleys Municipal Water District
United Chambers of the San Fernando Valley
Upland Chamber of Commerce
Upper San Gabriel Valley Municipal Water
District
Valley Industry & Commerce Association
Ventura Co. Economic Development Assoc.
Western Municipal Water District (unless
amended)
Westlands Water District

Analysis Prepared by: Tina Cannon Leahy / W., P. & W. / (916) 319-2096



191 Lathrop Way, Suite A, Sacramento, CA 95815
(916) 920-1120 phone (916) 929-0655 fax
www.rha.org

April 6, 2011

The Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento CA 95814

RE: AB 134 (Dickinson) - SUPPORT

Dear Assembly Member Dickinson:

On behalf of the Rental Housing Association of Sacramento Valley (RHA), an organization representing rental owners and property managers of nearly 80,000 residential rental units in the Sacramento region, we support Assembly Bill 134 that should ease the impact of the costs associated with the new wastewater discharge permit requirements placed upon ratepayers.

The health of our industry and the business community in general remains weak. Our entire region has been disproportionately impacted by the worst economic downturn since the Great Depression. The additional costs related to the permit will only undermine the fragile recovery that appears to be underway.

Your legislation is critical to easing the rate increases that rental owners and the customers we serve will see over the next several years. In fact, local officials estimate that apartment communities will see an increase of approximately \$30-\$40 more per unit per month, unless another source of funding is found. These increases come at a time as renters are burdened with higher inflationary costs for basic necessities. With property values decimated and rental owners unable to absorb additional costs, we are unsure how our industry will address these higher rates.

We appreciate your leadership on this issue. RHA can identify many partnerships we created over the years during your service at the local level. Now that you are serving at the state level, AB 134 is another example of your willingness to work with the business community and ratepayers.

Again, RHA supports your legislative efforts and we look forward to working with you throughout the process.

Sincerely,

Cory Koehler
Senior Deputy Director

*Serving the rental housing industry in
Sacramento, El Dorado, Placer, Sutter, Yuba,
Yolo, Amador, & Nevada Counties since 1943*



KF

Strength in Prosperity, Pride in Community www.rainbowchamber.com

Committee on Governmental Affairs

April 11, 2011

The Honorable Roger Dickinson
Member of the Assembly
State Capitol
Post Office Box 942849
Sacramento, California 94249-0009

RE: Support for Assembly Bill 134 (Dickinson)

Dear Assemblymember Dickinson:

On behalf of the Sacramento Rainbow Chamber of Commerce, I would like to express strong endorsement of your Assembly Bill 134, which would provide the greater Sacramento region with the ability to generate new revenue – by selling the resulting higher quality waste water after treatment – to help offset the costs associated with the new permit requirements recently imposed on the Sacramento Regional County Sanitation District (SRCSD).

On December 6, 2010, the Rainbow Chamber wrote to the Central Valley Regional Water Quality Control Board to express our concern that the then-proposed waste water permit requirements, if implemented abruptly, would have a deleterious effect on the economic recovery of the Sacramento region. In that letter (copy enclosed for your review), we also suggested that if such standards in fact were necessary,

Sacramento**Rainbow Chamber of Commerce of Sacramento**

1337 Howe Avenue, Suite 250
Sacramento, CA 95825
(916) 266-9630

means should be found to reduce the impact on rate payers, and particularly for "green" users whose practices help reduce the impact on the waste water system.

Your bill would in fact provide Sacramento-region waste water rate payers with that relief, and accordingly it has our full support. AB 134 also would complement the provisions of Senate Bill 52 (Steinberg), which would provide \$50 million from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, to the SRCSD to help offset some of the costs associated with the new permit requirements.

We at the Rainbow Chamber also continue to support a program of rewarding those waste water producers who use green methods, while also helping reduce rates for all payers. Therefore, we would support inclusion in your bill of a requirement that a portion of the funds generated by the sales of treated waste water be used by the SRCSD to further reduce rates for green users, and to put in place additional programs to encourage others to adopt green practices.

The Sacramento Rainbow Chamber of Commerce is a 300-strong organization of LGBT business owners and our allies, who are concerned with ensuring equal rights of LGBT persons and enhancing our business opportunities in the greater Sacramento region. AB 134, if enacted, would do much toward reducing the negative impact on the business climate in the region which would otherwise result from the new waste water permit requirements, and will enhance business opportunities and employment generally, including for the LGBT community.

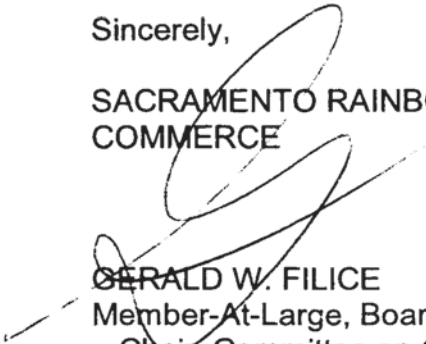
Thank you for sponsoring this legislation.

Sincerely,

SACRAMENTO RAINBOW CHAMBER OF
COMMERCE

GWF:n
cc:

RCC Members


GERALD W. FILICE
Member-At-Large, Board of Directors
Chair, Committee on Governmental Affairs
Contact: Filice Law Offices (916) 529-4635
BONNIE OSBORN, President
DARRICK LAWSON, Chair, Political Action
Committee



Rainbow Chamber of Commerce of Sacramento

1337 Howe Avenue, Suite 250
Sacramento, CA 95825
(916) 266-9630

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

AMENDED IN ASSEMBLY APRIL 15, 2011
AMENDED IN ASSEMBLY MARCH 23, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 134

**Introduced by Assembly Member Dickinson
(Coauthor: Assembly Member Huber)
(Principal coauthor: Senator Steinberg)
(Coauthor: Senator Wolk)**

January 12, 2011

An act to add Section 1486 to the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 134, as amended, Dickinson. Appropriation of water: Sacramento Regional County Sanitation District.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water.

Existing law requires the owner of a wastewater treatment plant to obtain the approval of the state board prior to making any changes in the point of discharge, place of use, or purpose of use of treated wastewater, and requires the state board to review the proposed changes in accordance with prescribed procedures.

This bill would authorize the Sacramento Regional County Sanitation District to file an application for a permit to appropriate a specified amount of water that is based on the volume of treated wastewater that the district discharges into the Sacramento River, as specified. The bill would authorize the state board to grant a permit to appropriate that

treated wastewater upon terms and conditions determined by the state board. *The bill would require the board, prior to granting a permit pursuant to these provisions, to comply with permit, approval, and review requirements and other laws applicable to the appropriation of water.*

This bill would make legislative findings and declarations as to the necessity of a special statute for the Sacramento Regional County Sanitation District.

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

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

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(a) The people of the State of California have a primary interest~~
4 ~~in the development of facilities to produce recycled water to~~
5 ~~supplement existing surface water and groundwater supplies and~~
6 ~~to assist in meeting the future water requirements of the state.~~

7 ~~(b) It is the intent of the Legislature that the state expeditiously~~
8 ~~undertake all possible steps to encourage the development of water~~
9 ~~recycling facilities so that recycled water may be made available~~
10 ~~to meet the growing water supply needs of the state.~~

11 ~~(c) It is in the best interest of the people of the State of~~
12 ~~California, in enacting this act, to provide an additional means for~~
13 ~~the Sacramento Regional County Sanitation District to realize the~~
14 ~~benefit of its production and discharge of high-quality recycled~~
15 ~~water, and to provide a potential revenue stream to offset the high~~
16 ~~costs associated with upgrades to the sanitation district's~~
17 ~~wastewater treatment plant, to meet new wastewater treatment~~
18 ~~requirements under the national pollutant discharge elimination~~
19 ~~system permit issued by the California Regional Water Quality~~
20 ~~Control Board, Central Valley.~~

21 ~~SEC. 2.~~

22 ~~SECTION 1.~~ Section 1486 is added to the Water Code, to read:

23 1486. (a) The Sacramento Regional County Sanitation District,
24 and any successor thereto, with respect to treated wastewater
25 produced by the sanitation district that meets the requirements of
26 the California Regional Water Quality Control Board, Central
27 Valley, *as may be amended or modified*, and that is discharged

1 into the Sacramento River, may file an application for a permit to
2 appropriate *an amount of water* up to the amount of treated
3 wastewater that is discharged into the Sacramento River, less
4 diminution by seepage, evaporation, transportation, or other natural
5 causes between the point of discharge from the wastewater
6 treatment plant and the point of diversion out of the Sacramento
7 River or the Sacramento-San Joaquin Delta.

8 (b) Upon application for a permit to appropriate water pursuant
9 to subdivision (a), the board may grant the permit subject to the
10 terms and conditions as in the board's judgment are necessary for
11 the protection of the rights of any legal user of the water.

12 (c) *Prior to the board granting a permit under subdivision (b),*
13 *the board shall comply with the provisions of Part 2 (commencing*
14 *with Section 1200) of Division 2, and other applicable law, and*
15 *may impose terms and conditions authorized thereunder.*

16 (e)

17 (d) Water appropriated in accordance with this section may be
18 sold or utilized for any beneficial purpose.

19 ~~SEC. 3.~~

20 *SEC. 2.* The Legislature finds and declares that a special law
21 is necessary and that a general law cannot be made applicable
22 within the meaning of Section 16 of Article IV of the California
23 Constitution because of the unique problems applicable to the full
24 utilization of the waters of the Sacramento River and the
25 Sacramento-San Joaquin Delta, into which treated wastewater
26 discharged by the Sacramento Regional County Sanitation District
27 flows.

FACT SHEET – AB 134 (Dickinson) [as amended April 15, 2011]

The Case for SRCSD’s Proposed Legislation to Recapture and Market Its High-Quality Recycled Water

Background

The need for a reliable water supply is vital to California’s economic viability. To help move toward sustainable management of its water supplies, the State has set ambitious water conservation, recycling and self-sustainability goals to be met by 2020. SRCSD has up to 180,000 acre feet per year of treated wastewater that could be marketed and reused to help the State supplement its water portfolio and help achieve its water recycling goals.

Key Contacts

Terrie Mitchell, Manager
Legislative & Regulatory Affairs
916/876-6092

Craig Johns, SRCSD Lobbyist
916/718-5490

What does AB 134 do? Does it automatically grant SRCSD a water right?

AB 134 does not automatically grant SRCSD a water right. It would simply enable SRCSD to file an application to the State Water Board to obtain such a water right permit for an equivalent amount of water that SRCSD treats and discharges to the Sacramento River. This would provide SRCSD the ability to market and sell its future high-quality water both in and out of the Sacramento region. AB 134 is specific and would apply only to the water SRCSD discharges to the Sacramento River, which accounts for less than 1-2% of the river’s average daily flows.

AB 134 is closely modeled after Water Code section 1485 (enacted in 1961, and amended in 1967), which specifically allows those who discharge wastewater to the San Joaquin River to file an appropriative water right application for the amount of water they discharge, minus calculated losses. The City of Stockton recently received a permit from the State Water Board pursuant to that legislation, allowing Stockton to divert water from the San Joaquin River.

Why is AB 134 necessary?

AB 134 will provide an additional procedural option for SRCSD to *potentially* realize the benefit of its treated wastewater discharges, by allowing SRCSD to obtain a water right permit for water attributable to its discharges of high-quality recycled water. SRCSD would then be able to use or market the water available under that water right permit to a willing buyer.

SRCSD’s ratepayers and the taxpayers of the Capitol Region may soon be required to finance up to \$2.1 billion to upgrade its wastewater treatment facilities, which will then produce some of the highest-quality recycled water in California – water pure enough for unrestricted agricultural and municipal recycled uses – or dedicated for Delta ecosystem needs. Revenue generated from the sale of this high-quality water could help offset some of the enormous costs associated with the upgrades at SRCSD’s wastewater treatment plant that will be necessary to meet the stringent treatment levels recently imposed by the Central Valley Regional Water Quality Control Board. Without other sources of funding, monthly sewer bills could triple for SRCSD ratepayers and new construction sewer hook-up fees could quadruple.

SRCSD has the desire and commitment to become a positive partner in Delta ecosystem restoration and water supply reliability – it now asks the Legislature to provide the self-help tools that SRCSD will need to make this goal a reality. AB 134 could provide a necessary revenue stream for SRCSD to develop recycled and new water supplies for use in and out of the Sacramento region, and help solve the issues now facing the Delta.

Does SRCSD have existing rights to its wastewater?

Yes. California Water Code sections 1210 and 1211 currently provide that the owner of a wastewater treatment plant holds the exclusive right to its treated wastewater, and can petition the State Water Board to change the point of discharge, place of use or purpose of use. SRCSD has invoked and confirmed its water rights through this petition process for its existing water recycling facilities. An existing State Water Board Order already confirms SRCSD's right to reuse up to 10 mgd of its existing discharge flows at certain places of use specified in the order.

Does the wastewater discharged by SRCSD constitute "return flows" that downstream users may acquire a right to?

No. Approximately 50-60% of the water collected and treated by SRCSD is derived from groundwater. Groundwater is considered "foreign water" and is legally distinct from surface water. As such, no downstream water right holder can legally claim a right to SRCSD's recycled water discharges that are derived from groundwater supply. Similarly, where water is diverted to storage away from a stream, a later release of this water from storage is not considered "natural" flow, but rather the flow of foreign waters. In this regard, water that passes through a sanitary sewer system and into a wastewater treatment plant is anything but natural. Through the treatment process, the water has changed significantly, both in its constituents and in the timing of its later return to a stream, after it has been temporarily stored in the sewer collection and treatment system. As a consequence, to the extent that water law concepts are applied, treated wastewater, regardless of its source, should *per se* be treated as foreign waters. Finally, many downstream water right holders contain the State Water Board's standard Permit Term 25, which provides that if the water available for use under the permit is wastewater, the permit "shall not be construed as giving any assurance that such supply will continue."

Would a water right application still need to be filed by SRCSD?

Yes. AB 134 would require SRCSD to file a water right application, which would be reviewed and potentially approved by the State Water Board. Interested parties may participate in that water right application and permitting process. Amendments to AB 134 (March 23 and April 15) confirm the State Water Board's authority and discretion to condition any water right awarded to SRCSD to protect legal users of the water, including environmental needs of the Delta.

Will AB 134 affect the water rights of others?

No. AB 134 is designed to address a very specific situation related to SRCSD's recycled water and provides another procedural tool for SRCSD to sell and transfer water, attributable to its recycled water discharges, to other interested parties. Moreover, AB 134 would not cause any injury to other legal users of water because, like the 1961 legislation that it is modeled after, it allows the State Water Board to grant any water right permit "upon such terms and conditions as in the [State Water] Board's judgment are necessary for the protection of the rights of any legal user of the water."

Has SRCSD taken amendments to address concerns of the Water Contractors?

Yes. SRCSD has met with dozens of parties interested in AB 134, including many Southern California and agricultural water suppliers. After these meetings, and in an effort to address concerns and objections raised, SRCSD asked Assembly Member Dickinson to make several, important changes to AB 134. On March 23 and April 15, 2011, the bill was formally amended to address all of the substantive objections received. Most importantly, amended AB 134 confirms the authority and discretion of the State Water Board to review and, if appropriate, approve SRCSD's potential water right application, subject to terms and conditions the State Water Board may deem necessary to protect all legal users of the water, including environmental needs of the Delta.

faxed

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Karen Mitchoff, 4th District
Federal D. Glover, 5th District

**Contra
Costa
County**



David Twa
Clerk of the Board
and
County Administrator
(925) 335-1900

April 15, 2011

The Honorable Roger Dickinson
State Capitol Room 3126
Sacramento, CA 95814

**RE: AB 134 (Dickinson): Appropriation of Water: Sacramento Regional
County Sanitation District – SUPPORT IN CONCEPT**

Dear Assembly Member Dickinson:

As Chair of the Contra Costa County Board of Supervisors, I write to express our support in concept for your bill, AB 134. This bill would enable the Sacramento Regional County Sanitation District to sell the District's high-quality recycled wastewater to downstream users, contingent on the issuance of a permit from the State Water Resources Control Board.

We are aware that state water regulators last December directed the District to construct new treatment facilities at its wastewater treatment plant to limit ammonia levels discharged into the Delta. These upgrades will make a direct and lasting contribution to achieving the state's co-equal goals of Delta ecosystem restoration and a reliable water supply for California.

AB 134 addresses a fundamental principle that is important to Contra Costa County and to the Delta Counties Coalition in which we participate -- that the costs of restoring the Delta to benefit those who live and work outside the Delta should not be borne disproportionately by Delta residents. The bill provides the Sacramento Regional County Sanitation District with the opportunity to generate revenue from the sale of its high quality water to offset the costs of complying with state permit requirements. We believe the Sanitation District's request in AB 134 to apply for another state permit for this purpose to offset the cost to its ratepayers is reasonable and appropriate.

Contra Costa County's Delta water policies also support increased water conservation. Consequently, we share the concern of the Water Parks and Wildlife Committee staff that legislation should not provide incentives for a water seller to increase water use in order to maximize revenue. We support consideration of an amendment recognizing

the need for increased conservation in the Sacramento region and limit the total volume of wastewater that could be subject to appropriation under this bill.

For these reasons, Contra Costa County supports the bill in concept.

Thank you for your efforts to protect the Delta as a place where our constituents live and work.

Sincerely,

A handwritten signature in black ink, appearing to read "Gayle B. Uilkema". The signature is fluid and cursive, with the first name being the most prominent.

GAYLE B. UILKEMA
Chair, Board of Supervisors

cc: Assembly Member Jared Huffman, Chair, Assembly Water, Parks and Wildlife Committee
Members, Assembly Water, Parks and Wildlife Committee
Consultants, Assembly Water, Parks and Wildlife Committee
Contra Costa County Legislative Delegation
Members, Board of Supervisors
L. DeLaney, County Administrator's Office
M. Avalon, Flood Control District
S. Goetz, Deputy Director, Conservation & Development Dept.
C. Christian, Nielsen, Merksamer, Parrinello, Gross & Leoni
P. Kutas, Delta Counties Coalition

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

ASSEMBLY THIRD READING
AB 134 (Dickinson)
As Amended April 15, 2011
Majority vote

WATER, PARKS & WILDLIFE 9-1 APPROPRIATIONS 12-4

Ayes: Huffman, Blumenfield, Campos,
Fong, Gatto, Roger Hernández,
Hueso, Lara, Yamada

Ayes: Fuentes, Blumenfield, Bradford,
Charles Calderon, Campos, Davis,
Gatto, Hall, Hill, Lara, Mitchell,
Solorio

Nays: Halderman

Nays: Harkey, Nielsen, Norby, Wagner

SUMMARY: Allows the Sacramento Regional County Sanitation District (SRCSD) to apply for a permit from the State Water Resources Control Board (SWRCB) to appropriate an amount of water up to the amount of discharged wastewater. Specifically, this bill:

- 1) Allows the SRCSD to file an application with the SWRCB for a permit to appropriate an amount of water equal to the amount of treated wastewater discharged, less carriage losses, for diversion out of the Sacramento River or Sacramento-San Joaquin Delta.
- 2) Clarifies that any permit granted by the SWRCB will be subject to the terms and conditions authorized under applicable law.
- 3) Declares a special law is necessary due to the unique problems applicable to full utilization of the waters of the Sacramento River into which the SRCSD discharges treated wastewater.

EXISTING LAW:

- 1) Provides that the owner of a wastewater treatment plant shall hold the exclusive right to the treated wastewater.
- 2) Requires approval from the SWRCB for a change in the point of discharge, place of use, or purpose of use of treated wastewater, unless such change does not decrease flow in any portion of a watercourse.
- 3) Protects wastewater which has been introduced into the watercourse with the intention of maintaining or enhancing fishery, wildlife, recreational or other instream beneficial uses from being treated as abandoned and subject to appropriation by others.
- 4) Allows waste disposal plants discharging into the San Joaquin River to apply for a permit to appropriate up to an amount of water equivalent to the discharge less carriage losses and to sell or utilize that water for any beneficial purpose.

FISCAL EFFECT: According to the Assembly Appropriations Committee, minor costs, no more than tens of thousands of dollars, to SWRCB to review SRCSD's permit application, should it file one. (Special fund.)

COMMENTS: The importance of the Sacramento-San Joaquin Delta Estuary (Delta) as a regional, state and national treasure and an integral part of an ecosystem which is home to more than 750 wildlife species and more than 120 species of fish is well documented. Equally well documented has been the precipitous decline of its fisheries including, but not limited to, fish species listed under both the Federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) such as Delta smelt, winter-run Chinook salmon and spring-run Chinook salmon.

There have been many reasons for this decline including the effects of the Central Valley Project (CVP) and State Water Project (SWP). The CVP/SWP, have two huge pumping plants located in the south of the Delta that are regulated to prevent jeopardy to ESA and CESA-listed fish species. Increasingly, however the agencies that contract with the Federal Bureau of Reclamation and State Department of Water Resources for CVP/SWP export supplies have focused on the possible role of other "stressors" besides the water projects in the fish declines. In particular, they have contributed to studies analyzing ammonia as affecting the Delta food web and fish species and called for more stringent permits on discharges into the Sacramento River from the Sacramento Regional Wastewater Treatment Plant (Treatment Plant) owned and operated by SRCSD. On December 9, 2010, the Central Valley Regional Water Quality Control Board issued a new Waste Discharge Requirement for the SRCSD Treatment Plant which, among its provisions, requires increased wastewater filtration and limits ammonia levels. SRCSD estimates facility upgrades to meet the new requirements could cost up to \$2.1 billion.

SRCSD's wastewater discharges form part of the water supply exported by the CVP/SWP. This is because the CVP/SWP Delta pumping plants are authorized to take all the water in the system that they are capable of diverting constrained by physical limitations (the size of the pumps and canals) and legal standards.

This bill would allow SRCSD to apply to the SWRCB for a permit to appropriate up to the amount of water that SRCSD discharges to the Sacramento River less carriage losses. A permit would allow SRCSD to sell or utilize the water for any beneficial purpose. However, this bill does not require the SWRCB to issue such a permit and would subject the permit, if issued, to the terms and conditions the SWRCB deems necessary to protect other legal users of water, including the environment.

Supporters of this bill note it is consistent with and modeled after existing law, which both affirms the SRCSD's right to its wastewater and, according to a statute enacted in 1961, allows the City of Stockton to appropriate wastewater from the San Joaquin River. Supporters assert that if SRCSD is able to obtain permits for a portion of the water it discharges it may be able to defray an incremental amount of the treatment plant upgrade costs.

Opponents of the bill are concerned that some of the water discharged by SRCSD under this bill has historically been considered Delta inflow available for use and export downstream. They also state that other treatment plants must make legally-required upgrades without the benefit of a special law.



ARMOUR STEEL COMPANY
I N C O R P O R A T E D

April 18, 2011

The Honorable Jared Huffman
Sacramento State Assembly
State Capitol
Sacramento, CA 95814

RE: Support for Assembly Bill 134—As Amended April 19, 2011

Dear Assembly Member Huffman,

As a member of the Board of Directors of The River District, a business organization representing over 400 businesses and property owners in the Sacramento Central City, I ask for your support of Assembly Bill 134 (Dickinson) (as amended April 19).

In December, 2010, the Central Valley Regional Water Quality Control Board imposed significant new mandates on the Sacramento Regional County Sanitation District's wastewater treatment plant. The cost of implementing these new mandates is estimated at \$2 billion. This will create a significant burden on residents, businesses and industry in the Sacramento region and further delay the economic recovery that has hit California's Capitol Region harder than most other areas of the state.

AB 134 is critical part of a plan to protect our region from the impacts of the new discharge permit. Again, as the representative organization for the businesses and property owners in The River District, we are in strong support of AB 134 and ask that the Assembly Committee on Water Parks and Wildlife offer their full support.

Sincerely,



Steve Ayers
Chief Executive Officer

C Members of Assembly Committee on Water Parks and Wildlife
Assembly Member Roger Dickinson
Stan Dean, SRCSD
Terry Mitchell, SRCSD

Leahy, Tina

From: Cole, Kathy <kcole@mwdh2o.com>
Sent: Tuesday, April 19, 2011 2:33 PM
To: Leahy, Tina
Subject: RE: Quick question RE: All Things Next Tuesday

Oppose → Neutral
 Metro Water Dist.

Remove the reference ... the bill has changed enough to warrant a fresh look.

From: Leahy, Tina [mailto:Tina.Leahy@asm.ca.gov]
Sent: Tuesday, April 19, 2011 2:27 PM
To: Cole, Kathy
Subject: Quick question RE: All Things Next Tuesday

Kathy,

If you do not have a formal position, do I remove your prior oppose position so that you are neutral? Or do I leave the prior oppose? Thanks.

- Tina

From: Cole, Kathy [mailto:kcole@mwdh2o.com]
Sent: Tuesday, April 19, 2011 12:39 PM
To: Leahy, Tina
Cc: Gonsalves, David
Subject: All Things Next Tuesday

I would like to download with you on bills we're engaged on and that are scheduled for next Tuesday ... specifically AB 134 (Dickinson) and AB 627 (B. Berryhill). I will soon have for you a coalition letter on AB 627 opposing the bill in its current form.

As far as AB 134 goes ... until I confirm with Jeff Kightlinger on my "official" characterization of our position on the most recent amendment, please know that we will NOT have a formal position on Tuesday, April 26. In light of my board's OPPOSE position (adopted in February), we must take the amended version of AB 134 back to our board at its next meeting on May 10. The official "party line" will be provided to you and the members of the AWP&W Committee as soon as I have confirmation from Jeff Kightlinger.

OK by you?

Kathy

This communication, together with any attachments or embedded links, is for the sole use of the intended recipient(s) and may contain information that is confidential or legally protected. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments or embedded links, from your system.



THE RIVER DISTRICT

April 19, 2011

The Honorable Fran Pavley
 Sacramento State Senate
 Chair, Committee on Natural Resources & Water
 State Capitol, Room 4035
 Sacramento, CA 95814

RE: Support for Assembly Bill 134

Dear Senator Pavley,

On behalf of The River District, a business organization representing over 400 businesses and property owners in the Sacramento Central City, I ask for your support of Assembly Bill 134 (Dickinson).

In December, 2010, the Central Valley Regional Water Quality Control Board imposed significant new mandates on the Sacramento Regional County Sanitation District's wastewater treatment plant. The cost of implementing these new mandates is estimated at \$2 billion. This will create a significant burden on residents, businesses and industry in the Sacramento region and further delay the economic recovery that has hit California's Capitol Region harder than most other areas of the state.

AB 134 is critical part of a plan to protect our region from the impacts of the new discharge permit. Again, as the representative organization for the businesses and property owners in The River District, we are in strong support of AB 134 and ask that the Senate Natural Resources and Water Committee offer their full support.

Sincerely,

Patty Kleinknecht
 Executive Director

c Senator Anthony Canella
 Senator Noreen Evans
 Senator Jean Fuller
 Senator Doug LaMalfa
 Senator Alex Padilla
 Senator Lois Wolk
 David Gonsalves
 Craig Johns
 Terrie Mitchell

Bud Applegate
Senior Vice President
Lic. #00785734

301 University Avenue, Suite 100
Sacramento, CA 95825
www.colliers.com/sacramento

MAIN +1 916 929 5999
DIRECT +1 916 563 3003
MOBILE +1 916 802 5200
FAX +1 916 641 1318
EMAIL bud.applegate@colliers.com



April 19, 2011

The Honorable Jared Huffman
Sacramento State Assembly
State Capitol
Sacramento, CA 95814

RE: Support for Assembly Bill 134—As Amended April 19, 2011

Dear Assembly Member Huffman,

As a member of the Board of Directors of The River District, a business organization representing over 400 businesses and property owners in the Sacramento Central City, I ask for your support of Assembly Bill 134 (Dickinson) (as amended April 19).

In December, 2010, the Central Valley Regional Water Quality Control Board imposed significant new mandates on the Sacramento Regional County Sanitation District's wastewater treatment plant. The cost of implementing these new mandates is estimated at \$2 billion. This will create a significant burden on residents, businesses and industry in the Sacramento region and further delay the economic recovery that has hit California's Capitol Region harder than most other areas of the state.

AB 134 is critical part of a plan to protect our region from the impacts of the new discharge permit. Again, as the representative organization for the businesses and property owners in The River District, we are in strong support of AB 134 and ask that the Assembly Committee on Water Parks and Wildlife offer their full support.

Sincerely,

COLLIERS INTERNATIONAL

A handwritten signature in cursive script that reads "W.W. Applegate, Jr." The signature is written in black ink and is positioned above the printed name.

W.W. Applegate, Jr.
Senior Vice President

c: Members of Assembly Committee on Water Parks and Wildlife
Assembly Member Roger Dickinson
Stan Dean, SRCSD
Terry Mitchell, SRCSD



April 19, 2011

The Honorable Roger Dickinson
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0009

RE: Assembly Bill 134—As Amended April 19 (Dickinson) SUPPORT

Dear Assemblymember Dickinson:

On behalf of the North State Building Industry Association (NSBIA) and our over 500 member companies in home building and land development, I would like to express our unqualified support for Assembly Bill (AB) 134. AB 134 would provide a pathway for the greater Sacramento region to generate new revenue to offset the costs demanded by the new permit requirements recently placed upon the Sacramento Regional County Sanitation District. (SRCSD).

Improved treatment of wastewater and expanded water reuse programs by the SRCSD can help with restoration efforts for the Sacramento-San Joaquin Delta. This benefit to the state comes at an extremely high cost to the Sacramento region. This increased cost of compliance, which will benefit both Northern and Southern California communities, will have a dramatic and direct impact on the Sacramento region's economy.

SRSD's will be required to spend \$2.1 billion to upgrade its wastewater treatment facilities. The completed project will produce recycled water clean enough to be used for unrestricted agricultural and recycled water uses. Ensuring that SRCSD has the ability to put its treated wastewater to its highest and best use is extremely important to our region.

It is our understanding that AB 134 will not impact exiting water rights or create new or additional rights. This measure will simply clarify the right of SRCSD to utilize their treated effluent as a part of the overall financing package for the required upgrades.

Again, on behalf of the NSBIA, I would like to express our strong and unqualified support for AB 134. This legislation is critical to offsetting the dramatic increases the Sacramento region will be facing in the future.

Sincerely,

Dennis M Rogers
Senior Vice President
Governmental and Public Affairs

1536 Eureka Road
Roseville, CA 95661-3055
phone 916.677.5717
fax 916.677.5734



8401 LAGUNA PALMS WAY • ELK GROVE, CALIFORNIA 95758
 TEL: 916.683.7111 • FAX: 916.627.4200 • www.elkgrovecity.org

April 19, 2011

The Honorable Roger Dickinson
 Member of the California Assembly
 State Capitol
 P.O. Box 942849
 Sacramento, CA 94249-0009

**RE: AB 134 – Sacramento Regional County Sanitation District (Dickinson)
 NOTICE OF SUPPORT**

Dear Assemblymember Dickinson:

On behalf of the City of Elk Grove, I am writing to express the City's support of AB 134 as amended on April 15, 2011.

The wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCSD) wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

I hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Honorable Roger Dickinson
Page 2
April 19, 2011

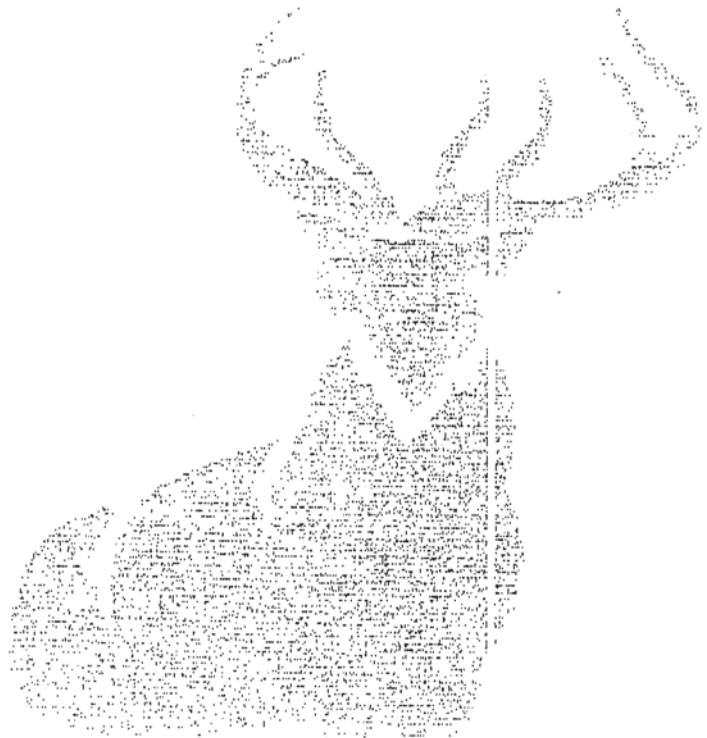
Your support for the Sacramento region is much appreciated.

Sincerely,



Steven M. Detrick
Mayor

c:Senator Gaines
Senator Wolk
Assemblymember Huber
Assemblymember Buchanan
Elk Grove City Council





April 20, 2011

The Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, California 95814

RE: Support for Assembly Bill 134, as amended 4/15/11 – Sacramento Regional County Sanitation District

Dear Assembly Member Dickinson:

The California League of Food Processors is pleased to support AB 134, which would provide a necessary revenue stream for the Sacramento Regional County Sanitation District (SRCSD) to develop recycled and new water supplies for use in and out of the Sacramento Region.

AB 134 would provide an additional procedural option for SRCSD to realize the benefit of its treated wastewater discharges, by allowing SRCSD to obtain a water right permit for water attributable to its discharges of high-quality recycled water. SRCSD would then be able to use or market the water available under the water right permit to a willing buyer.

Selling high-quality recycled water would give the SRCSD the ability to offset the \$2 billion cost to comply with stringent mandate imposed by the Central Valley Regional Water Quality Control Board in December, 2010. The mandate imposed by the Central Valley Regional Water Quality Control Board would require the SRCSD to upgrade its facilities to remove ammonia and other byproducts of the processing of effluent. Without other sources of funding, monthly sewer bills could triple for SRCSD ratepayers.

This dramatic increase in ratepayer costs will have significant adverse impacts on the regional economy. The UOP Eberhardt School of Business estimates that the \$2 billion hit over the next 30 years would result in a loss of over \$7 billion in regional income as well as 30,000 lost jobs. Neither the Sacramento Region, nor the State of California can afford such losses in these tough economic times.

For these reasons, CLFP supports AB 134 and thanks you for your continued work to protect the ratepayers of SRCSD and the economic future of the entire region.

Sincerely,

TRUDI HUGHES
Director, Government Affairs

Cc: Assembly Water, Parks and Wildlife Committee



April 20, 2011

Assembly Member Roger Dickinson
State Capitol, Room 3126
Sacramento, CA 95814

Subject: AB 134 Strong Support - As Amended April 19th

Dear Assembly Member Dickinson:

On behalf of the Downtown Sacramento Partnership (DSP) an organization that represents nearly 400 property and business owners in Sacramento's down core, we thank you for your efforts to mitigate costs associated with the required upgrades to the Sacramento Regional County Sanitation District (SRCS D) waste water treatment plant. The DSP looks forward to working with you as a cosponsor of this important measure to protect residential and commercial ratepayers in the Sacramento region.

Without another funding source, the slated upgrades to the water treatment facility will cost approximately \$2 billion, potentially tripling bills for SRCS D ratepayers and quadrupling hook-up fees for new construction. These increases, especially in a time of economic uncertainty, could render development, specifically in the downtown core, infeasible. AB 134 could help offset these costs for our constituents and the region as a whole, while concurrently aiding the state in achieving their goal of increasing uses of recycled water.

AB 134 will not affect existing water rights of any other entity or grant water additional rights to SRCS D. The measure will clearly set forth the right of SRCS D to apply for the right with the State Water Resources Board. Additionally, this bill will not set a standard to be followed in future cases, but rather simply extends legislative precedent set in 1961 for the San Joaquin River to the Sacramento River.

In our desire to be responsible environmental stewards, this bill can be used as a tool to finance these upgrades, as complying with the required improvements places a large undue economic burden on Sacramento ratepayers and could further stall economic recovery in the downtown core and across the region.

Again, we thank you for your continued support of ratepayers in the Sacramento region and look forward to continuing to work with you as this process moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "MA", written over a white background.

Michael Ault
Executive Director

CC: DSP Board of Directors
Terrie Mitchell, SRCS D
Senate Pro-Term Darrell Steinberg

916 442.8575
FAX 916 442.2053

980 9th Street, Suite 400
Sacramento, CA 95814

d o w n t o w n s a c . o r g



Technology in balance with nature

April 21, 2011

Main Office

10060 Goethe Road

Sacramento, CA 95827-3553

Tele: [916] 876-6000

Fax: [916] 876-6160

Sacramento Regional Wastewater

Treatment Plant

8521 Laguna Station Road

Elk Grove, CA 95758-9550

Tele: [916] 875-9000

Fax: [916] 875-9068

Board of Directors

Representing:

County of Sacramento

County of Yolo

City of Citrus Heights

City of Elk Grove

City of Folsom

City of Rancho Cordova

City of Sacramento

City of West Sacramento

Stan R. Dean
District Engineer

Prabhakar Somavarapu
Director of Policy and Planning

Ruben Robles
Director of Operations

Assembly Member Roger Dickinson
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0009

Via fax to 916-319-2109

SUBJECT: Support for Assembly Bill 134 – As Amended April 15, 2011

Dear Honorable Assembly Member Dickinson:

As you know, the wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCS D) wastewater treatment plant. As a result, SRCS D's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents and businesses in the Sacramento region.

To accomplish the necessary facility upgrades for SRCS D, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCS D to market its water for use in and outside of the Sacramento region.

We support Assembly Bill 134, amended on April 15, 2011, which establishes a path for SRCS D to file an application for an appropriative water rights permit allowing SRCS D to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River and it provides assurances that water rights appropriated by SRCS D will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated, and we look forward to working with you as this bill progresses through the legislature and changes are considered.

Sincerely,

Kerri M. Howell
Chair, SRCS D Board of Directors

cc: Senator Darrell Steinberg, President pro Tem
Assembly Member Jared Huffman, Chair, Water, Parks & Wildlife Committee
Stan Dean, District Engineer for SRCS D
Craig Johns, California Resource Strategies
Barry Broad, Broad and Gusman
Terrie Mitchell, Manager, SRCS D Legislative & Regulatory Affairs Manager

Interim County Executive

Steven C. Szalay

Legislative Advocate

Leslie A. McFadden

**Board of Supervisors**

Phillip R. Serna, District 1

Jimmie Yee, District 2

Susan Peters, District 3

Roberta MacGlashan, District 4

Don Nottoli, District 5

County of Sacramento

April 21, 2011

The Honorable Jared Huffman, Chair
 Assembly Water, Parks and Wildlife Committee
 State Capitol Room 3120
 Sacramento, CA 95814

RE: AB 134 (Dickinson)—SUPPORT As Amended April 15, 2011
Set April 26, 2011 Assembly Water, Parks and Wildlife Committee

Dear Assembly Member Huffman:

On behalf of the Sacramento County Board of Supervisors, I am happy to express the Board's support for the latest amended version of AB 134 (Dickinson) which would enable the Sacramento Regional County Sanitation District (SRCSD) to sell the District's high-quality wastewater to downstream users, contingent on the issuance of a permit from the State Water Resources Control Board.

The need for this bill results from the terms of a wastewater discharge permit the Central Valley Regional Water Quality Control Board issued in December 2010. As a result of this permit, our District must make major upgrades to our wastewater treatment facilities at an estimated \$2 billion cost to local ratepayers for water that will flow into the Delta. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

AB 134 provides the District with the opportunity to offset the costs of local compliance with state permit requirements that will benefit other parts of the state. The bill provides a reasonable approach to address a local problem while also ensuring that existing water rights are protected.

For all these reasons, we support AB 134. If I can provide any additional information, I can be reached at 916-874-3578.

Sincerely,

Leslie A. McFadden
 Legislative Advocate

cc: The Honorable Roger Dickinson
 Members, Assembly Water, Parks and Wildlife Committee
 Consultants, Assembly Water, Parks and Wildlife Committee



April 25, 2011

Via Hand Delivery

The Honorable Roger Dickinson
California State Assemblyman
Capitol Office - Room 3126
Sacramento, CA 95814

AB 134 (Dickinson)

Dear Assemblymember Dickinson:

On behalf of WateReuse California, I am writing to thank you for the work you, your staff and the bill's sponsor have done to address the concerns raised by WateReuse and others on your bill, AB 134. The recent amendments to the bill have addressed our concerns and WateReuse California is removing its opposition to the bill.

WateReuse California has worked for nearly thirty years to improve the legal and regulatory system around recycled water. We appreciate your office's efforts to manage the fiscal challenges facing Sacramento Regional Sanitation District (District) and balance those with the larger water supplier concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Smith", is written over a light gray dotted background.

Dave Smith, Ph.D
Managing Director
WateReuse California

Recycling Water to Meet the World's Needs

International Office: 1199 North Fairfax Street, Suite 410, Alexandria, Virginia 22314 • 703-684-2409 • 703-548-3075 (fax)
California Section Office: 915 L Street, Suite 1000 • Sacramento, California 95814 • 916 669-8401 • 916 720-0331 (fax)

www.waterreuse.org

Alameda County Flood Control and Water Conservation District Zone 7
Alameda County Water District
Burbank Water and Power
Castaic Lake Water Agency
Chambers of Commerce Alliance, Ventura and Santa Barbara Counties
Downey Chamber of Commerce
El Monte/South El Monte Chamber of Commerce
Irwindale Chamber of Commerce
La Verne Chamber of Commerce
Long Beach Area Chamber of Commerce
Mojave Water Agency
Redondo Beach Chamber of Commerce & Visitors Bureau
Regional Chamber of Commerce – San Gabriel Valley
San Gabriel Valley Economic Partnership
San Gabriel Valley Legislative Coalition of Chambers
Southern California Water Committee
Three Valleys Municipal Water District
Western Municipal Water District
Westlands Water District

April 25, 2011

Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

Re: Assembly Bill 134 (Dickinson) – **REMOVE OPPOSITION**
Sacramento Regional County Sanitation District (SRCSD)

Hearing Date: Assembly Water, Parks and Wildlife Committee: April 26, 2011

Dear Assembly Member Dickinson:

On behalf of the public agencies and business organizations noted below, we wish to remove our opposition to your bill, AB 134, in light of the April 15 amendments to the bill.

The amended version of the bill removes all the intent language and maintains the State Water Resources Control Board's authority to consider impacts to downstream legal users of water and fish and wildlife.

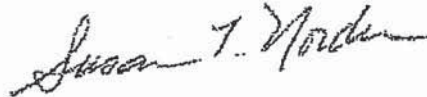
For these reasons, we wish to remove our prior opposition to AB 134 but removal of our opposition should not be construed as support for an application filed by SRCSD to the State Water Resources Control Board in the event AB 134 becomes law.

Sincerely,

Sincerely,



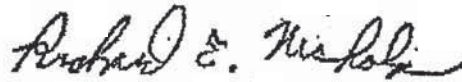
Jill Duerig, General Manager
Alameda County Flood Control and
Water Conservation District Zone 7



Susan Nordin
Executive Director
Downey Chamber of Commerce



Walter L. Wadlow
General Manager
Alameda County Water District



Richard Nichols
Executive Director
El Monte/South El Monte Chamber of
Commerce



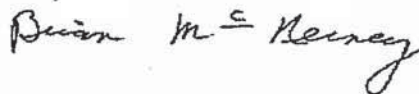
Ron Davis
General Manager
Burbank Water and Power



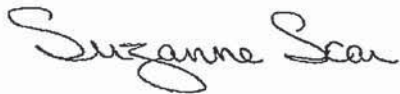
Lisa Bailey
President/CEO
Irwindale Chamber of Commerce



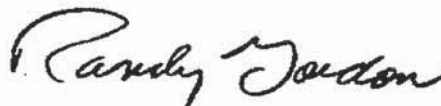
Dan Masnada
General Manager
Castaic Lake Water Agency



Brian McNeerney
President/CEO
La Verne Chamber of Commerce



Suzanne Scar, Chair
Chambers of Commerce Alliance of Ventura
& Santa Barbara Counties



Randy Gordon
President and CEO
Long Beach Area Chamber of Commerce

Kirby Brill
General Manager
Mojave Water Agency

Arun D. Tolia
Chairman
San Gabriel Valley Legislative Coalition of
Chambers

Marna Smeltzer
President/CEO
Redondo Beach Chamber of Commerce &
Visitors Bureau

Richard Atwater
Executive Director
Southern California Water Committee

Heidi L. Gallegos
Chief Executive Officer
Regional Chamber of Commerce -
San Gabriel Valley

Richard Hansen
Gen. Mgr. /Chief Engineer
Three Valleys Municipal Water District

Cynthia Kurtz
President/CEO
San Gabriel Valley Economic
Partnership

John Rossi
General Manager
Western Municipal Water District

Thomas W. Birmingham
General Manager
Westlands Water District

cc: Members of the Assembly Water, Parks and Wildlife Committee
Tina Leahy, Consultant, Assembly Water, Parks and Wildlife Committee
Doug Haaland, Assembly Republican Caucus

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Date of Hearing: April 26, 2011

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Jared Huffman, Chair
AB 134 (Dickinson) – As Amended: April 15, 2011

SUBJECT: Appropriation of treated wastewater

SUMMARY: Allows the Sacramento Regional County Sanitation District (SRCSD) to apply for a permit from the State Water Resources Control Board (SWRCB) to appropriate an amount of water up to the amount of discharged wastewater. Specifically, this bill:

- 1) Allows the SRCSD to file an application with the SWRCB for a permit to appropriate an amount of water equal to the amount of treated wastewater discharged, less carriage losses, for diversion out of the Sacramento River or Sacramento-San Joaquin Delta.
- 2) Clarifies that any permit granted by the SWRCB will be subject to the terms and conditions authorized under applicable law.
- 3) Declares a special law is necessary due to the unique problems applicable to full utilization of the waters of the Sacramento River into which the SRCSD discharges treated wastewater.

EXISTING LAW

- 1) Provides that the owner of a wastewater treatment plant shall hold the exclusive right to the treated wastewater.
- 2) Requires approval from the State Water Resources Control Board for a change in the point of discharge, place of use, or purpose of use of treated wastewater, unless such change does not decrease flow in any portion of a watercourse.
- 3) Protects wastewater which has been introduced into the watercourse with the intention of maintaining or enhancing fishery, wildlife, recreational or other instream beneficial uses from being treated as abandoned and subject to appropriation by others.

FISCAL EFFECT: Unknown

COMMENTS:

The importance of the Sacramento-San Joaquin Delta Estuary (Delta) as a regional, state and national treasure and an integral part of an ecosystem which is home to more than 750 wildlife species and more than 120 species of fish is well documented. Equally well documented has been the precipitous decline of its fisheries including, but not limited to, fish species listed under both the Federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) such as Delta smelt, winter-run Chinook salmon and spring-run Chinook salmon.

There have been many reasons for this decline including the effects of the Central Valley Project (CVP) and State Water Project (SWP). The CVP/SWP, which operate in a coordinated fashion, have two huge pumping plants located near one another in the south of the Delta which export

water primarily to Central Valley agriculture and southern California cities. Collectively, these pumping plants change the overall hydrodynamics of the Delta including causing Old River and Middle River to cease to flow westward towards the San Francisco Bay and instead run backwards towards the pumps themselves. This reverse flow causes direct losses of fish, larva and eggs due to entrainment (being drawn in to the pumping facilities) and impingement (being trapped against screens) as well as indirect losses due to straying, predation, and loss of food production.

The killing of ESA and CESA listed species is legally prohibited without a permit. The Bay Delta Conservation Plan (BDCP) process is a stakeholder-driven effort to obtain new 50 year endangered species authorizations for CVP/SWP Delta operations. During BDCP planning, the agencies that contract with the Federal Bureau of Reclamation and State Department of Water Resources for CVP/SWP export supplies have increasingly focused on the possible role of other "stressors" besides the water projects in the fish declines. In particular, they have contributed to studies analyzing ammonia as affecting the Delta food web and fish species and called for more stringent permits on discharges into the Sacramento River from the Sacramento Regional Wastewater Treatment Plant (Treatment Plant) owned and operated by SRCSD. On December 9, 2010 the Central Valley Regional Water Quality Control Board issued a new Waste Discharge Requirement for the SRCSD Treatment Plant which, among its provisions, requires increased wastewater filtration and limits ammonia levels.

SRCSD's wastewater discharges form part of the water supply exported by the CVP/SWP. This is because, while most water permits are for quantifiable amounts of water to be diverted at a specific location during a specific time period for a specific place of use, the CVP/SWP Delta pumping plants take all the water in the system that they are capable of diverting constrained by physical limitations (the size of the pumps and canals) and legal standards. In some years this has allowed them to deliver both contracted-for amounts of water plus amounts in excess of those contracts.

Currently, the BDCP process has focused on up to five new intakes on the Sacramento River stretching from approximately the town of Freeport to downstream at the town of Courtland. The SRCSD Treatment Plant's outfall is also at Freeport. The proposed BDCP intakes, which collectively would be almost fifty times larger than any other screened diversion in the Delta, would be used to export water via a new peripheral facility either around or under the Delta. Under the terms of the new Waste Discharge Requirement, the Treatment Plant will be providing nearly drinking water quality water almost directly at the proposed new diversion points.

Support Arguments: SRCSD and other supporters of this bill assert that Treatment Plant upgrades will cost up to \$2 billion and that a multi-faceted approach is needed at the "local, state and federal level to minimize the burden on the Sacramento Region." They point out this bill follows an approach that was established in 1961 for the San Joaquin River and that the amended version of the bill provides assurances that any permit issued by the SWRCB would contain the terms and conditions necessary to protect other legal users of water, including the environment.

Opposition Arguments: Opponents state that some of the effluent discharge that could be sold by SRCSD under this bill "has historically been considered Delta inflow available for use and/or export downstream." They state that "many other communities have had to do similar upgrades to their sewage treatment to meet Clean Water Act requirements without seeking to radically transform existing water rights law."

REGISTERED SUPPORT / OPPOSITION:

Support

CA Apartment Association
CA Association of Sanitation Agencies
CA League of Food Processors
CA Teamsters Public Affairs Council
Campbell Soup Company
Central Contra Costa Sanitary District
Congress Member Doris Matsui
City of Citrus Heights
City of Elk Grove
City of Rancho Cordova
City of Sacramento
City of West Sacramento

Downtown Sacramento Partnership
Jim Provenza, Yolo County Supervisor
Marriott Cal Expo Properties
Midtown Business Association
Mike McGowan, Yolo County Supervisor
Nor-Cal Beverage Co., Inc.
North State Building Industry Association
Sacramento County Board of Supervisors
Sacramento Metro. Chamber of Commerce
Sacramento Rainbow Chamber of Commerce
Sacramento Regional Co. Sanitation District
The River District

Opposition

Alameda County Flood Control and Water
Conservation District Zone 7
Alameda County Water District
Association of CA Water Agencies
Burbank Chamber
Burbank Water and Power
California Chamber of Commerce
California Municipal Utilities Assoc.
Calleguas Municipal Water District
Castaic Lake Water Agency
Central City Association
Chambers of Commerce Alliance,
Ventura and Santa Barbara Counties
Chino Valley Chamber of Commerce
City of Corona (unless amended)
Coachella Valley Water District
Contra Costa Water District (unless amended)
Downey Chamber of Commerce
Eastern Municipal Water District
EI Monte/South EI Monte Chamber of
Commerce
Friant Water Authority
Fullerton Chamber of Commerce
Inland Empire Utilities Agency (unless amended)
Irvine Chamber of Commerce
Irvine Ranch Water District
Irwindale Chamber of Commerce
Kern County Water Agency
LaVerne Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce

Los Angeles Business Council
Modesto Irrigation District
Mojave Water Agency
Montclair Chamber of Commerce
Montebello Chamber
North Orange County Legislative Alliance
Orange County Business Council
Redondo Beach Chamber of Commerce &
Visitors Bureau
Regional Chamber of Com/-San Gabriel Valle
San Diego County Water Authority
San Fernando Chamber of Commerce
San Gabriel Valley Legislative Coalition of
Chambers
Simi Valley Chamber of Commerce
Southern California Water Committee
Southwest California Legislative Council
The Greater Corona Valley Chamber of
Commerce
Three Valleys Municipal Water District
United Chambers of the San Fernando Valley
Upland Chamber of Commerce
Upper San Gabriel Valley Municipal Water
District
Valley Industry & Commerce Association
Ventura Co. Economic Development Assoc.
WaterReuse California
Western Municipal Water District (unless
amended)
Westlands Water District

Analysis Prepared by: Tina Cannon Leahy / W., P. & W. / (916) 319-2096



To: Assemblymember Jared Huffman
1020 N St. Room 160
Tina Leahy

Re: **AB 134 to be heard in Assembly Water, Parks & Wildlife on April 26**

Attached find materials on AB 134 which will be heard in tomorrow morning's Water, Parks & Wildlife committee hearing. For more information on AB 134, please contact:

Terrie Mitchell, SRCSD's Legislative & Regulatory Affairs Manager at 916-876-609 or mitchellt@sacsewer.com.



For more information visit www.sacdeltasolutions.com and follow @DeltaSolutions on Twitter and friend "Sacramento Delta-Solutions" on Facebook.

THE SACRAMENTO BEE

Viewpoints: A market solution for treatment plant costs

By Roger Dickinson, Matt Mahood and Cesar Diaz

Special to the Bee

April 5, 2011

State water regulators last December adopted a new discharge permit for Sacramento's Regional Wastewater Treatment Plant that will require upgrades that could cost regional ratepayers approximately \$2 billion. Opinions differed on whether those requirements were necessary to protect human health and the Sacramento-San Joaquin Delta ecosystem, or were politically driven because the treatment plant lies in the heart of the ongoing Delta water wars.

Ultimately, it is most important to focus on how we move forward, without decimating an already fragile Sacramento regional economy. According to a study completed last November by economists at the University of the Pacific, the \$2 billion treatment plant upgrade and the associated monthly rate increases will have significant negative effects on the region in annual income and job loss over the next 30 years. In addition, new sewer connection fees for homes and businesses will increase 300 percent to 500 percent, prompting concerns in the business, development and labor trades sectors that new development will be further stagnated in an already frail economic climate in our region.

Our solution to the economic dilemma facing the Sacramento region is simple and focuses on finding free-market solutions to offset part of the upgrade costs, while also improving the Delta ecosystem. In this way, higher utility rates might be minimized, aiding economic recovery for the region.

To that end, Assemblyman Roger Dickinson, D-Sacramento, introduced Assembly Bill 134, a simple but significant measure that would enable the Sacramento Regional County Sanitation District to apply for the right to appropriate an amount of water from the Sacramento River that is roughly equal to the amount it treats and discharges to the Sacramento River. It is important to note that, after treatment plant upgrades are complete, the high-quality water produced could be put to numerous beneficial uses including irrigation of agricultural and urban lands, habitat restoration, offsetting groundwater pumping and preserving precious drinking water supplies.

Under AB 134, the high-quality water could become a valuable asset to downstream agriculture and municipal users. Today, the Regional Sanitation District treats about 151 million gallons of wastewater every day, or roughly 180,000 acre-feet each year. At current market rates, transfers of Sacramento River water could generate tens of millions of dollars each year that could be used to offset the treatment plant upgrade costs.

After AB 134 was introduced, many Southern California water providers were understandably concerned about potential impacts the bill could have on their existing water rights. Amendments were made to address these concerns – without diluting the original intent of the bill – to enable the sanitation district to seek a water right that it could sell to a willing buyer.

There are four important points worth noting about AB 134 that members of the Assembly Water, Parks & Wildlife Committee should keep in mind when considering the bill today. First, the bill does not, by itself, grant a water right to the sanitation district; it simply provides a procedural opportunity to request the water right. Second, when the district applies to state authorities for the water right, it must demonstrate that legal users of the water and environmental needs of the Delta are protected.

Third, while novel, this legislative approach is not new. In fact, the Legislature adopted almost identical legislation in 1961 to enable municipal wastewater agencies discharging to the San Joaquin River to apply for a similar right, and such a right was granted to the city of Stockton.

Fourth, allowing the sanitation district to obtain a water right in an amount equal to what it puts into the Sacramento River would not necessarily reduce incentives to recycle water more locally. Using the river to "wheel" it downstream for reuse in areas distant from the treatment plant could save tens of millions of dollars that would be spent to install transmission pipes from the treatment plant to water reuse locations.

We believe the time has come to seriously consider market-based opportunities to help finance municipal infrastructure such as wastewater treatment plants, and AB 134 is a small step toward that approach. AB 134 could provide a vital boost to the Sacramento economy, while at the same time resulting in improved water quality for the Delta.

Roger Dickinson, left, is the 9th District assemblyman representing the city of Sacramento and part of Sacramento County. Matt Mahood, center, is the president and CEO of the Sacramento Metropolitan Chamber of Commerce. Cesar Diaz, right, is the legislative director of the State Building and Construction Trades Council of California.

<http://www.sacbee.com/2011/04/05/3527873/a-market-solution-for-treatment.html>



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

April 26, 2011

Assembly Member Jared Huffman
Chair, Assembly Water, Parks and Wildlife Committee
State Capitol, Room 3120
Sacramento, California 95814

AB 134 (DICKINSON) – REMOVE OPPOSITION (4/15/2011)

Dear Assembly Member Huffman,

The San Diego County Water Authority removes its opposition of AB 134 by Assembly Member Dickinson, a measure relating to the appropriation of water and the Sacramento Regional Sanitation Agency.

The amendments as of April 15, 2011 address the concerns raised by Authority staff. As amended, the San Diego County Water Authority no longer has concerns with the measure.

For these reasons, the Board of Directors of the San Diego County Water Authority remove their opposition to AB 134.

Sincerely,

Jonathan Clay
Legislative Representative

CC: Assembly Member Dickinson
Members and Staff, Assembly Water, Parks and Wildlife Committee

CITIES
• Del Mar • Escondido • National City
• Oceanside • Poway • San Diego

COUNTY
• San Diego
(ex officio)

IRRIGATION DISTRICTS
• Santa Fe • South Bay
• Vista

PUBLIC UTILITY DISTRICT
• Fallbrook

MEMBER AGENCIES

WATER DISTRICTS
• Helix • Otay
• San Dieguito
• Vallecitos

FEDERAL AGENCY
• Camp Pendleton Marine Corps Base

MUNICIPAL WATER DISTRICTS
• Carlsbad • Ramona
• Olivenhain • Rincon del Diablo
• Padre Dam • Valley Center
• Rainbow • Yuima



STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0119
(916) 319-2096
FAX (916) 319-2196

Assembly California Legislature

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

JARED HUFFMAN
CHAIR

Tuesday, April 26, 2011

9:00 a.m.

State Capitol, Room 437

COMMITTEE STAFF

CHIEF CONSULTANT
DIANE COLBORN

PRINCIPAL CONSULTANT
TINA CANNON LEAHY

PRINCIPAL ASSISTANT
KATHY MATSUMOTO

PROPOSED CONSENT FILE

- 5. AB 787 Chesbro Marine Protected Areas: Calif. Native American Tribes
- 9. AB 1152 Chesbro Groundwater

LATE SUPPORT/OPPOSE POSITIONS

ITEM	BILL NO. & AUTHOR	SUPPORT	OPPOSE
1.	AB 134 (Dickinson)	Armour Steel Company, Inc. Rental Housing Assoc. of Sac. Valley	<i>(Please see note below re: Removal of Opposition by various entities)</i>
7.	AB 1077 (Carter)	Calif. Black Chamber of Commerce Calif. State Conference of the NAACP	Home Builders Assoc., Tulare/Kings Counties Porterville Chamber of Commerce Tulare Chamber of Commerce Tulare Co. Agriculture Advisory Committee
10.	AB 1180 (Bradford)	Greater San Fernando Valley Chamber of Commerce	

AB 134 (Dickinson) OPPOSITION REMOVED BY:

- | | |
|--|--|
| Alameda Co. Flood Control
and Water Conservation Dist. Zone 7 | Long Beach Area Chamber of Commerce |
| Alameda County Water District | Mojave Water Agency |
| Burbank Water and Power | Redondo Beach Chamber of Commerce & Visitors Bureau |
| Castaic Lake Water Agency | Regional Chamber of Commerce-San Gabriel Valley |
| Chambers of Commerce Alliance, Ventura
and Santa Barbara Counties | San Gabriel Valley Economic Partnership |
| Downey Chamber of Commerce | San Gabriel Valley Legislative Coalition of Chambers |
| EI Monte/South EI Monte Chamber of Commerce | Southern California Water Committee |
| Irwindale Chamber of Commerce | Three Valleys Municipal Water District |
| LaVerne Chamber of Commerce | Western Municipal Water District |
| | Westlands Water District |





CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

915 L STREET, SUITE 1460 • SACRAMENTO, CALIFORNIA 95814
(916) 326-5800 • (916) 326-5810 FAX • www.cmua.org

DAVID L. MODISETTE, EXECUTIVE DIRECTOR

OFFICERS

President

JOHN DISTASIO

Sacramento Municipal Utility District

Vice President

DAVID WRIGHT

Riverside Public Utilities Department

Secretary

JAMES BECK

Transmission Agency of No. California

Treasurer

TIM HAINES

State Water Contractors

General Counsel

ARLEN ORCHARD

Sacramento Municipal Utility District

April 29, 2011

The Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

**RE: AB 134 (Dickinson) -- Removal of Opposition
As amended April 15, 2011**

BOARD OF GOVERNORS

MICHELLE BERTOLINO

Roseville Electric Department

BILL CARNAHAN

Southern California Public Power Authority

PHYLLIS CURRIE

Pasadena Water & Power Department

RON DAVIS

Burbank Water & Power

MARCIE EDWARDS

Anaheim Water & Power Department

VALERIE FONG

City of Palo Alto

ED HARRINGTON

San Francisco Public Utilities Commission

CASEY HASHIMOTO

Turlock Irrigation District

PAUL HAUSER

Redding Electric Utility

PAUL JONES II

Irvine Ranch Water District

KEVIN KELLEY

Imperial Irrigation District

DEBRA MAN

Metropolitan Water District of
Southern California

ROBERT MARTIN

East Valley Water District

GEORGE MORROW

Azusa Light & Water Department

RON NICHOLS

Los Angeles Department of Water & Power

JAMES POPE

Northern California Power Agency

JOHN ROUKEMA

Santa Clara / Silicon Valley Power

ALLEN SHORT

Modesto Irrigation District

GLENN STEIGER

Glendale Water & Power

Dear Assemblyman Dickinson:

On behalf of the California Municipal Utilities Association (CMUA), we are writing to inform you that the April 15 amendments to AB 134 have removed our opposition to your measure.

We appreciate your willingness to work on the bill.

Sincerely,

Jennifer West
Director for Water

3126



Vision for the Future

**Association of California
Water Agencies**

Association of California Water Agencies
910 K Street, Suite 100
Sacramento, California 95814-3577
916.441.4545 FAX 916.325.4849

Hall of the States
400 N. Capitol St., N.W. Suite 357 South
Washington, D.C. 20001-1512
202.434.4760 FAX 202.434.4763
www.acwa.com

May 10, 2011

The Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

RE: Assembly Bill 134 – Sacramento County Regional Sanitation District

Dear Assembly Member Dickinson:

On behalf of the Association of California Water Agencies (ACWA), I am pleased to inform you that ACWA has removed its opposition to AB 134 based upon the April 15, 2011, amendments and has moved to a “neutral” position.

Thank you for addressing the concerns that ACWA had with AB 134. I look forward to working with you on other legislation as the session progresses.

Sincerely,

Cindy Tuck
State Legislative Director

CT: rm

Date of Hearing: May 11, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 134 (Dickinson) – As Amended: April 15, 2011

Policy Committee: Water, Parks and Wildlife

Vote: 9-1

Urgency: No State Mandated Local Program: No

Reimbursable: No

SUMMARY

This bill explicitly allows the Sacramento Regional County Sanitation District to apply to the State Water Resources Control Board for a permit to appropriate an amount of water for diversion from the Sacramento River or the Sacramento San-Joaquin Delta equal to the amount of treated wastewater discharged by the district.

FISCAL EFFECT

Minor costs, no more than tens of thousands of dollars, to the board to review the district's permit application, should it file one. (Special fund.)

COMMENTS

- 1) Rationale. The Sacramento Regional County Sanitation District contends this bill provides the district the opportunity to apply for a permit, which, if approved, may allow the district to realize an important revenue stream. The district notes that it sorely needs such revenue, given the district and its ratepayers are facing \$2.1 million in mandatory treatment upgrades ordered by the Central Valley Regional Water Quality Control Board in response to the district's release of ammonia and pathogens. The district describes much of the water it releases into the Sacramento River as having been pumped from groundwater and, therefore, foreign to the river. The district further notes this bill is consistent with and modeled after existing law, which affirms the district's right to its wastewater and which, according to a statute enacted in 1961, allows the City of Stockton to appropriate water from the San Joaquin River.
- 2) Support. This bill is supported by numerous private and public organizations in the Sacramento region concerned about the effect of the costs the region will face to upgrade its wastewater treatment systems.
- 3) Opposition. The bill is opposed by a long list of industry, agricultural and water districts that benefit from water exports from the delta.

Analysis Prepared by: Jay Dickenson / APPR. / (916) 319-2081



******CHANGE OF POSITION******

May 11, 2011

TO: The Honorable Roger Dickinson

FROM: Valerie Nera, Policy Advocate

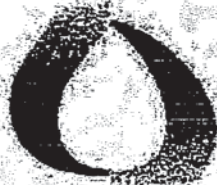
**SUBJECT: AB 134 (DICKINSON) – APPROPRIATIONS OF WATER: SACRAMENTO REGIONAL
COUNTY SANITATION DISTRICT
WITHDRAW OPPOSITION**

The California Chamber of Commerce has **WITHDRAWN OPPOSITION** to your **AB 134** as amended April 25, 2011, and has **NO POSITION** on the bill. We appreciate the author working with us to address our concerns. We will continue to watch the bill and review future amendments. The California Chamber of Commerce may take a position on the bill again depending on the specific nature of future amendments.

cc: Gareth Elliot, Office of the Governor
Doug Haaland, Assembly Republican Caucus

MF: jh

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
www.calchamber.com



Inland Empire Utilities Agency

A MUNICIPAL WATER DISTRICT

8075 Kimball Ave. • Chino, CA 91708
P.O. Box 9020 • Chino Hills, CA 91709
TEL (909) 993-1600 • FAX (909) 993-9000
www.ieua.org

May 18, 2011

The Honorable Assemblyman Dickinson
State Capitol Building
Sacramento, CA 94249

**RE: AB 134 (Dickinson): Sacramento Regional County Sanitation District
Remove opposition- no position as amended on April 15, 2011**

Dear Assemblyman Dickinson:

I am writing on behalf of the Inland Empire Utilities Agency (IEUA) to remove our opposition to AB 134 (Dickinson) and take a neutral position on the legislation.

We appreciate your willingness to listen to all concerned parties and amend the bill to address our concerns. We trust that this productive dialogue will continue if any further amendments are proposed to this legislation.

Please don't hesitate to contact me if there are any further issues that need to be discussed.

Sincerely,

INLAND EMPIRE UTILITIES AGENCY

Thomas A. Love
General Manager

Water Smart – Thinking in Terms of Tomorrow

Terry Gatlin
President

Michael E. Camacho
Vice President

Steven J. Elle
Secretary/Treasurer

Gene Koopman
Director

Ansel Santiago
Director

Thomas A. Love
General Manager

May 19, 2011

Honorable Roger Dickinson
Assemblymember, 9th District
State Capitol
Sacramento, CA 95184

RE: AB 134 (Dickinson) – SUPPORT

Dear Assemblymember Dickinson,

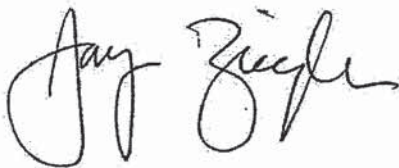
The Nature Conservancy (the “Conservancy”) is pleased to support your AB 134 which we hope will provide incentives for the Sacramento Regional County Sanitation District (“SRCSD”) to treat wastewater using advanced methods that will aid in improvement of Delta water quality. If passed into law, this bill will help SRCSD put advanced treated wastewater to beneficial use and help defray the cost of upgrading its treatment facilities.

The Conservancy is a global, non-profit organization dedicated to the conservation of biodiversity. We seek to achieve our mission through science-based planning and implementation of conservation strategies that provide for the needs of people and nature. In general, we support the expanded use of recycled water in order to improve water supply reliability for people and nature.

For the past year, we have participated in a stakeholder group headed by SRCSD to explore water recycling options in South Sacramento County. One of the barriers to implementing water recycling projects in this region is the cost of upgrading treatment facilities. Given this circumstance, we understand why SRCSD desires additional assurances that it will be able secure the right to wastewater that is treated at its facilities. We believe AB 134 could provide incentives to help reduce nutrient impacts and enhance water quality in the Delta.

For these reasons, the Conservancy supports AB 134. Please feel free to contact us should you have any questions.

Sincerely,



Jay Ziegler
Director, External Affairs & Policy



**CONTRA COSTA
WATER DISTRICT**

1331 Concord Avenue
P.O. Box H20
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122
www.ccwater.com

DL

Directors
Joseph L. Campbell
President

Karl L. Wandry
Vice-President

Bette Boatman
Lisa M. Borba
John A. Burgh

Jerry Brown
General Manager

May 24, 2011

The Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

**Subject: AB 134 Appropriation of Water: Sacramento Regional County
Sanitation District**

Dear Assembly Member Dickinson:

Previously, the Contra Costa Water District (CCWD) Board of Directors had adopted a position of Oppose Unless Amended on AB 134 – Appropriation of Water: Sacramento Regional County Sanitation District.

On May 18, 2011, the CCWD Board of Directors removed the opposition to the bill language as amended. The amendments incorporated into the bill addressed concerns that this bill could limit the State Board's regulatory role and procedural opportunity for agency input, and could potentially impact senior water right holders' access to supplies from the Sacramento River. Amendments also addressed concerns that this bill could reduce supplies available to downstream legal users of water and does so in a manner that would establish an adverse precedent.

CCWD appreciates the opportunity to work with your office and the sponsoring agency on amendments to AB 134.

If you have any questions regarding the proposed amendments, please contact Jennifer Allen, Director of Public Affairs at (925) 688-8041.

Sincerely,

Joseph L. Campbell
President

JLC/JA:crp

cc: Board of Directors

0035



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

1215 K Street, Suite 2290 • Sacramento, CA 95814 • TEL: (916) 446-0388 – FAX: (916) 231-2141 • www.casaweb.org

June 6, 2011

The Honorable Fran Pavley, Chair
Senate Natural Resources and Water Committee
State Capitol
Sacramento, CA 95814

**SUBJECT: AB 134 (DICKINSON) RE: SACRAMENTO REGIONAL COUNTY
SANITATION DISTRICT-- SUPPORT**

Dear Senator Pavley, *Fran,*

The California Association of Sanitation Agencies (CASA) is pleased to support AB 134 by Assemblyman Dickinson, which would allow the Sacramento Regional County Sanitation District (SRCSD) to seek a water right to recoup the value of highly treated recycled water. CASA is a statewide association of local public agencies providing wastewater collection, treatment and water recycling services to millions of Californians.

Current law provides that a wastewater treatment plant has the exclusive right to the wastewater entering its facility. AB 134 would simply provide that SRCSD has the right to file a water rights application for an amount of water equivalent to the volume of its discharge. The legislation would confirm that SRCSD may file for a water right permit to potentially obtain an ownership interest in at least some portion of the water discharged. This is very similar to a provision of existing law, which allows the City of Stockton and others who discharge treated effluent to the San Joaquin River to file an appropriate water right application for the amount of water they discharge, minus calculated loss.

While critical to California's water supply future, highly treated recycled water is an extremely costly commodity to produce. CASA endorses the central concept underlying AB 134: that wastewater agencies and their ratepayers, who expend significant local resources to produce the water, should have the ability to recoup a portion of those costs from users of the water. For these reasons, we are pleased to support AB 134.

Sincerely,

Michael F. Dillon
Michael F. Dillon
CASA Lobbyist

CC: The Honorable Roger Dickinson



BRETT BUATTI
VICE PRESIDENT MANUFACTURING -
SACRAMENTO OPERATIONS

Telephone: (916.395.5110)
Fax: (916.395.5143)
Brett_buatti@campbellsoup.com

Campbell Soup Supply Company L.L.C.
6200 Franklin Blvd.
Sacramento, CA 95824-3499

June 6, 2011

Sen. Fran Pavley
Chair, Committee on Natural Resources & Water
State Capitol, Rm. 4035
Sacramento, CA 95814

By Fax: 916/323-2232

Dear Senator:

On behalf of the Campbell Soup Company, I am writing to thank you for agreeing to hold a hearing on AB134, which we support.

AB 134 would provide an important opportunity for SRCSD to apply for an appropriative water right for an equivalent amount of the high-quality treated water that it discharges to the Sacramento River. Selling high-quality recycled water would give SRCSD the ability to help offset the \$2 billion cost to comply with stringent permit mandates imposed by the Central Valley Regional Water Quality Control Board in December 2010. According to an analysis completed by the UOP Eberhardt School of Business, the overall economic impact to the Sacramento region of that \$2 billion hit over the next 30 years would be a loss of some \$7.4 billion in regional income, as well as nearly 30,000 jobs lost over the same period.

Because the volume of discharged recycled water to the Sacramento River today is on average less than 1-2% of the entire average flow rate of the Sacramento River, the water right sought by SRCSD would have a negligible effect on downstream water users. Moreover, the bill does not grant a water right to SRCSD. It simply clarifies SRCSD's right to apply for one with the State Water Resources Control Board (State Water Board). The State Water Board will consider the request and determine the conditions of an appropriation as they do now for all such requests.

We remain opposed to the decision by the Central Valley Regional Water Quality Control Board, which was neither based on sound science or an appropriate cost/benefit analysis. Again, many thanks for your continued work to protect the ratepayers of SRCSD and the economic future of the entire region.

Sincerely,

cc: Sen. Anthony Canella Fax: 445-0773
Sen. Noreen Evans; Fax: 323-6958
Sen. Jean Fuller; Fax: 322-3204
Sen. Doug LaMalfa; Fax: 445-7750
Sen. Alex Padilla; Fax 324-6645
Sen. Lois Wolk; Fax: 323-2304
David Gonsalves; Fax: 319-2109
Craig Johns; Fax: 782-2788
Terrie Mitchell, Fax 854-8892



CITY OF CITRUS HEIGHTS

6237 Fountain Square Drive • Citrus Heights, CA 95621-5577 • (916) 725-2448
Fax (916) 725-7599 • TDD (916) 725-6185 • www.citrusheights.net

The City of Citrus Heights is committed to providing high quality, economical, responsive city services to our community

June 6, 2011

Senator Fran Pavley
Chair, Committee on Natural Resources & Water
State Capitol, Rm. 4035
Sacramento, CA 95814

SUBJECT: Support for Assembly Bill 134 (Dickinson)

Dear Senator Fran Pavley,

As you know, the wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on SRCSD's wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

We hereby provide a support position on Assembly Bill 134 (Dickinson) as amended on April 15, 2011. This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,

Jeannie Bruins
Mayor
City of Citrus Heights

Cc: David Gonsalves
Craig Johns



Central Contra Costa Sanitary District

Protecting public health and the environment

5019 Imhoff Place, Martinez, CA 94553-4392

FAX: (925) 676-7211

June 7, 2011

JAMES M. KELLY
General Manager

KENTON L. ALM
Counsel for the District
(510) 808-2000

ELAINE R. BOEHME
Secretary of the District

Senator Fran Pavley
Chair of the Committee on Natural Resources
State Capitol, Room 4035
Sacramento, CA 95814

SENT VIA FACSIMILE: 916-323-2232

SUBJECT: AB 134
RE: SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT - SUPPORT

Dear Senator Pavley:

The Central Contra Costa Sanitary District (District) is pleased to support your AB 134, which would allow the Sacramento Regional County Sanitation District (SRCSD) to seek a water right to recoup the value of highly treated recycled water. The District has taken a leadership role in developing and promoting recycled water projects in our service area in Central Contra Costa County. This year we expect to supply about 600 million gallons of recycled water for landscape irrigation and commercial uses, and we plan to continue to expand our recycled water program in the coming years.

Current law provides that a wastewater treatment plant has the exclusive right to the wastewater entering its facility. AB 134 would simply provide that SRCSD has the right to file a water rights application for an amount of water equivalent to the volume of its discharge. The legislation would confirm that SRCSD may file for a water right permit to potentially obtain an ownership interest in at least some portion of the water discharged. This is very similar to a provision of existing law, which allows the City of Stockton and others who discharge treated effluent to the San Joaquin River to file an appropriative water right application for the amount of water they discharge, minus calculated loss.

While critical to California's water supply future, highly treated recycled water is an extremely costly commodity to produce. The District endorses the central concept underlying AB 134; that wastewater agencies and their ratepayers, who expend significant local resources to produce the water, should have the ability to recoup a portion of those costs from users of the water. For these reasons, we are pleased to support AB 134.

Sincerely,

James M. Kelly
General Manager

JMK:db



cc: Central Contra Costa Sanitary District Board of Directors
Senator Anthony Canella
Via Fax: 916-445-0773
Senator Noreen Evans
Via Fax: 916-323-6958
Senator Jean Fuller:
Via Fax: 916-322-3204
Senador Doug Lámala
Via Fax: 916-445-7750
Senator Alex Padilla
Via Fax: 916-324-6645
Senator Lois Walk
Via Fax: 916-323-2304
David Gonzales, Chief of Staff, Assembly Member Roger Dickinson
Via Fax: 916-319-2109
Craig Johns, California Resources Strategies
Via Email: cjohns@calrestrats.com
Terrie Mitchell, Manager, SRCSD Legislative and Regulatory Affairs
Via Email mitchellt@sacsewer.com
Ann Farrell, Director of Engineering, Central Contra Costa Sanitary District
Don Berger, Associate Engineer, Central Contra Costa Sanitary District



June 7, 2011

Senator Fran Pavley
 Chair, Committee on Natural Resources and Water
 State Capitol, Room 4035
 Sacramento, CA 95814

Subject: AB 134 (Dickinson) Strong Support

Dear Senator Pavley:

On behalf of the Downtown Sacramento Partnership (DSP) an organization that represents nearly 400 property and business owners in Sacramento's down core, we would like to offer our support of AB 134 to help mitigate costs associated with the required upgrades to the Sacramento Regional County Sanitation District (SRCSD) waste water treatment plant.

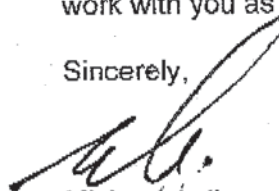
Without another funding source, the slated upgrades to the water treatment facility will cost approximately \$2 billion, potentially tripling bills for SRCSD ratepayers and quadrupling hook-up fees for new construction. These increases, especially in a time of economic uncertainty, could render development, specifically in the downtown core, infeasible. AB 134 could help offset these costs for our constituents and the region as a whole, while concurrently aiding the state in achieving their goal of increasing uses of recycled water.

AB 134 will not affect existing water rights of any other entity or grant water additional rights to SRCSD. The measure will clearly set forth the right of SRCSD to apply for the right with the State Water Resources Board. Additionally, this bill will not set a standard to be followed in future cases, but rather simply extends legislative precedent set in 1961 for the San Joaquin River to the Sacramento River.

In our desire to be responsible environmental stewards, this bill can be used as a tool to finance these upgrades, as complying with the required improvements places a large undue economic burden on Sacramento ratepayers and could further stall economic recovery in the downtown core and across the region.

Again, we would like to offer our strong support of AB 134 and look forward to continuing to work with you as this process moves forward.

Sincerely,



Michael Ault
 Executive Director

CC: DSP Board of Directors
 Senator Anthony Canella
 Senator Noreen Evans
 Senator Jean Fuller
 Senator Doug LaMalfa
 Senator Alex Padilla
 Senator Lois Wolk
 Terrie Mitchell, SRCSD
 David Gonsalves, Assembly Member Dickinson's Office
 Craig Johns

916 442.8575
 FAX 916 442.2053

980 9th Street, Suite 400
 Sacramento, CA 95814



OFFICE OF THE
CITY COUNCIL

CITY OF SACRAMENTO
CALIFORNIA

JAY SCHENIRER
COUNCILMEMBER
DISTRICT FIVE

June 7, 2011

Senator Fran Pavley
Chair, Committee on Natural Resources and Water
State Capitol, Room 4035
Sacramento, CA 95814

Subject: AB 134 - Support As Amended (Sacramento County Regional County Sanitation District)

Dear Senator Pavley,

On March 15, 2011, the Sacramento City Council's Law and Legislation Committee voted to support AB 134 and Assemblymember Dickinson's efforts to offset the costs for upgrades to the Sacramento Regional Wastewater Treatment Plant. I am writing you this letter today to reaffirm the City's support of this legislation.

As we noted in our earlier support letter, the original language in AB 134 faced significant opposition from outside this region and we commend the efforts of Assemblymember Dickinson to find common ground with those parties. We believe the amended version of AB 134 remains consistent with the City's adopted policies on the Delta Plan. The City supports the proposed legislation as a means to facilitate the District's ability to market its recycled waste water.

On behalf of the City of Sacramento, I respectfully urge the passage of this legislation by the Committee on Natural Resources and Water.

Sincerely,

Jay Schenirer, Chair
Law and Legislation Committee

cc: Senator Darrell Steinberg, President Pro Tem
Senator Anthony Canella
Senator Noreen Evans
Senator Jean Fuller
Senator Doug LaMalfa
Senator Alex Padilla
Senator Lois Wolk
Assemblyman Roger Dickinson
Mayor Kevin Johnson and Members of Sacramento City Council
David Jones, Emanuels Jones and Associates



8401 LAGUNA PALMS WAY • ELK GROVE, CALIFORNIA 95758
TEL: 916.683.7111 • FAX: 916.627.4200 • www.elkgrovecity.org

June 7, 2011

Sen. Fran Pavley
Chair, Committee on Natural Resources & Water
State Capitol, Rm. 4035
Sacramento, CA 95814

**RE: AB 134 – Sacramento Regional County Sanitation District (Dickinson)
NOTICE OF SUPPORT**

Dear Senator Pavley:

On behalf of the City of Elk Grove, I am writing to express the City's support of AB 134 as amended on April 15, 2011.

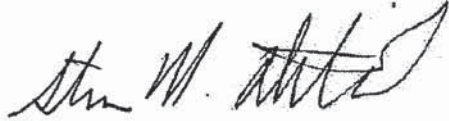
The wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCSD) wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

I hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,



Steven M. Detrick
Mayor

- c: Sen. Ted Gaines
- Sen. Anthony Canella
- Sen. Noreen Evans
- Sen. Jean Fuller
- Sen. Doug LaMalfa
- Sen. Alex Padilla
- Sen. Lois Wolk
- David Gonsalves
- Craig Johns
- Jason Gonsalves
- Elk Grove City Council

Bud Applegate
Senior Vice President
Lic. #00785734

301 University Avenue, Suite 100
Sacramento, CA 95825
www.colliers.com/sacramento

MAIN +1 916 929 5999
DIRECT +1 916 563 3003
FAX +1 916 641 1318
Email Bud.Applegate@colliers.com



June 7, 2011

Honorable Jared Huffman
Sacramento State Assembly
State Capitol
Sacramento, CA 95814

RE: Support for Assembly Bill 134—As Amended April 19, 2011

Dear Assembly Member Huffman,

As a member of the Board of Directors of The River District, a business organization representing over 400 businesses and property owners in the Sacramento Central City, I ask for your support of Assembly Bill 134 (Dickinson) (as amended April 19).

In December, 2010, the Central Valley Regional Water Quality Control Board imposed significant new mandates on the Sacramento Regional County Sanitation District's wastewater treatment plant. The cost of implementing these new mandates is estimated at \$2 billion. This will create a significant burden on residents, businesses and industry in the Sacramento region and further delay the economic recovery that has hit California's Capitol Region harder than most other areas of the state.

AB 134 is critical part of a plan to protect our region from the impacts of the new discharge permit. Again, as the representative organization for the businesses and property owners in The River District, we are in strong support of AB 134 and ask that the Assembly Committee on Water Parks and Wildlife offer their full support.

Sincerely,

COLLIERS INTERNATIONAL

A handwritten signature in cursive script that reads "Bud".

W.W. Applegate, Jr.
Senior Vice President

c: Members of Assembly Committee on Water Parks and Wildlife
Assembly Member Roger Dickinson
Stan Dean, SRCSD
Terry Mitchell, SRCSD



Robert J. McGarvey
Mayor

David Sander
Vice Mayor

Linda Budge
Council Member

Ken Cooley
Council Member

Dan Skoglund
Council Member

JUN 13 2011

June 9, 2011

Sen. Fran Pavley
Chair, Committee on Natural Resources & Water
State Capitol, Rm. 4035
Sacramento, CA 95814
Fax: 916/323-2232

RE: AB 134 - Sacramento Regional County Sanitation District (Dickinson)
NOTICE OF SUPPORT (as amended on April 15)

Dear Senator Pavley:

On behalf of the City of Rancho Cordova, I am writing to express my support for AB 134, as amended on April 15.

The wastewater discharge permit issued by the Central Valley Regional Water Quality Control Board in December 2010 imposes significant new mandates on the Sacramento Regional County Sanitation District's (SRCSD) wastewater treatment plant. As a result, SRCSD's ratepayers may soon be required to spend an estimated \$2 billion to upgrade its wastewater treatment facilities. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

To accomplish the necessary facility upgrades for SRCSD, a multi-faceted approach is needed at the local, state and federal level to minimize the financial burden to the Sacramento region, and it will take a combination of increased sewer rates and fees, state and federal funding, and opportunities for SRCSD to market its water for use in and outside of the Sacramento region.

I hereby provide a support position on Assembly Bill 134 (Dickinson). This bill establishes a path for SRCSD to file an application for an appropriative water rights permit allowing SRCSD to use or sell the water rights in and outside the region. This bill follows an approach that was established in 1961 for the San Joaquin River, and it provides assurances that water rights appropriated by SRCSD will be subject to terms and conditions that are necessary to protect other legal users of the water.

Your support for the Sacramento region is much appreciated.

Sincerely,

Robert J. McGarvey, Mayor

Robert J. McGarvey
Mayor



CALIFORNIA TEAMSTERS PUBLIC AFFAIRS COUNCIL

1127 ELEVENTH STREET, SUITE 501
SACRAMENTO, CALIFORNIA 95814

(916) 446-0291

FAX (916) 446-9321

E-MAIL: INFO@TEAMSTERCTPAC.ORG
WWW.CATEAMSTERS.COM

EXECUTIVE BOARD

ROME ALOISE
CO-CHAIRMAN - PRESIDENT
JOINT COUNCIL NO. 7
250 EXECUTIVE PARK BLVD., STE. 3100
SAN FRANCISCO, CA 94134

RANDY CAMMACK
CO-CHAIRMAN - PRESIDENT
JOINT COUNCIL NO. 42
818 OAK PARK ROAD, STE 250
COVINA, CA 91724

POLICY COMMITTEE JOINT COUNCIL NO. 7

MARTY FRATES
OAKLAND
RUDY HERNANDEZ
BAKERSFIELD
DAVE HAWLEY
REDDING
JIM TOBIN
SACRAMENTO
BILL HOYT
SAN JOSE
DALE ROBBINS
MARTINEZ
ROBERT MORALES
SAN FRANCISCO
GAYLORD PHILLIPS
MODESTO
DARRELL PRATT
FRESNO
SAM ROSAS
STOCKTON
SCOTT LUPO
VISALIA
LUCIO REYES
STOCKTON
RAFAEL MIRANDA
SANTA ROSA
ERNIE YATES
DALY CITY
JOE LANTHIER
SAN BRUNO
TONY GONZALES
SALINAS
BRAD SEBRING
WATSONVILLE
LUPE JUAREZ
MODESTO
JACK BOOKTER
SAN FRANCISCO

JOINT COUNCIL NO. 42

ART CANTU
SAN DIEGO
MIKE BERGEN
BLOOMINGTON
BILL ELDER
VENTURA
LYNN SWENSON
SANTA MARIA
RON HERRERA
COVINA
LEO REED
N HOLLYWOOD
VICTOR TORRES
SAN DIEGO
ROBERT LENNOX
COVINA
JAIME VASQUEZ
SAN DIEGO
RICK MIDDLETON
CARSON
PAUL KENNY
LOS ANGELES
TODD MENDEZ
SAN DIEGO
ERIC TATE
LONG BEACH
RENE MEDRANO
LOS ANGELES
RAY WHITMER
BELLFLOWER
PATRICK KELLY
ORANGE
CHRIS GRISWOLD
S. EL MONTE
BARRY BROAD
LEGISLATIVE DIRECTOR
MARSI NEWMAN
PUBLIC AFFAIRS ADMINISTRATOR
SHANE GUSMAN
LEGISLATIVE REPRESENTATIVE

To: All Members of the Senate Natural Resources & Water Committee

From: Barry Broad
Shane Gusman
Marcie Berman

Date: June 9, 2011

Subject: AB 134 (Dickinson)-SUPPORT

On behalf of the California Teamsters Public Affairs Council, we are writing to express support for AB 134 by Assembly Member Roger Dickinson. This bill would ensure that Sacramento is able to negotiate bilateral agreements so as to sell treated water and relieve taxpayers and rate payers from the burden of subsidized water clean-up.

CTPAC supports this bill because it would enhance the financial integrity of our water system and, also, because it would protect the jobs of Teamster members who work in this industry.

CTPAC urges your "aye" vote on this bill.

cc: Assembly Member Roger Dickinson



American Rivers
Thriving By Nature

June 9, 2011

Senator Fran Pavley
Chair,
Senate Committee on Natural Resources and Water
State Capitol, Rm. 4035
Sacramento, CA 95814

Re: A.B. 134 (Dickinson) – SUPPORT

Dear Senator Pavley:

American Rivers is pleased to support A.B. 134. We testified in support of this bill before the Assembly Water, Parks and Wildlife Committee on April 26, 2011.

If enacted, this bill will authorize Sacramento Regional County Sanitation District (SRCSD) to seek a water right for its wastewater discharges. This bill provides that any such water right application will be subject to the provisions of the Water Code and other applicable laws. As a general matter, these provisions require protection of existing water rights and uses and also public trust resources. The bill is specifically intended to provide incentives to SRCSD to modify its facility to provide advanced treatment of its wastewater discharges. Such advanced treatment will enhance water quality conditions in the Delta.

American Rivers is a non-profit membership corporation based in Washington, D.C. Our mission is to restore and protect our nation's rivers for the benefit of fish, wildlife, and people. We have more than 70,000 supporters, including 6,000 in California. We have many members in SRCSD's service area and the Delta. We are participating in several efforts to develop and implement measures to restore water supply reliability and the ecosystem of the Delta.

American Rivers supports A.B. 134. We believe that the bill, if enacted, will contribute to Delta restoration in a manner that protects the interests of existing water rights and uses.

Respectfully submitted,

Steve Rothert
Director, California Regional Office

cc: (via fax): Senator Anthony Canell
Senator Noreen Evans
Senator Jean Fuller
Senator Doug LaMalfa
Senator Alex Padilla
Senator Lois Wolk

FOSTERING REGIONAL ECONOMIC PROSPERITY



metrochamber

SACRAMENTO METROPOLITAN
CHAMBER OF COMMERCE

2011 CHAIR

Gregory Eldridge
CH2MHILL

1ST VICE CHAIR

John Frisch
Cornish & Carey Commercial
Newmark Knight Frank

2ND VICE CHAIR

Martha Clark Lofgren
Brewer Lofgren LLP

IMMEDIATE PAST CHAIR

Randy Sater
StoneBridge Properties

COMMUNITY DEVELOPMENT

Chris Delfino
Downey Brand LLP

JOBS & BUSINESS GROWTH

Bill Yee
Western Contract

MARKETING & COMMUNICATIONS

Gordon Fowler
3fold Communications

PROGRAMS & EVENTS

Kathy McKim
AT&T

PUBLIC POLICY

Maggie Townsend
ICF International

SMALL BUSINESS

Tim Cahill
Charles C. Bell, Inc.

AT-LARGE REPRESENTATIVES

James Beckwith
Five Star Bank

Elizabeth Brinton

SMUD

Michael O'Brien

Sacramento Magazines Corporation

Beverly "Babs" Sandeen, Ph.D.
University of California, Davis

Shelly Schlenker

Mercy/CHW

METRO PAC

Ardja Zahedan
RCH Group

LEGAL COUNSEL

Shella Carroll
Carroll & Associates, PC

TREASURER

Warren Kashiwagi
Perry-Smith LLP

PRESIDENT & CEO

Matthew Mahood
Sacramento Metro Chamber

June 14, 2011

Senator Fran Pavley
Chair, Committee on Natural Resources & Water
State Capitol, Rm. 4035
Sacramento, CA 95814

RE: SUPPORT - ASSEMBLY BILL 134 (DICKINSON)

Dear Senator Pavley,

On behalf of the Sacramento Metro Chamber, I would like to express our strong support for Assembly Bill 134, which would provide the greater Sacramento region with the ability to generate new revenue to offset the costs associated with the new permit requirements recently placed upon the Sacramento Regional County Sanitation District (SRCSD). We respectfully ask for your support when this bill comes before you in the Senate Natural Resources and Water Committee.

Improved treatment of wastewater and expanded water reuse programs by the SRCSD can help with Sacramento-San Joaquin Delta ecosystem restoration efforts and augment critical water supplies in an environmentally sustainable manner, resulting in benefits throughout the state. However, the cost will be a substantial burden on our region's economic growth and stability.

SRCSD's ratepayers and taxpayers of the Capitol region may soon be required to spend \$2.1 billion to upgrade its wastewater treatment facilities, which will then produce some of the highest-quality recycled water in California, water pure enough for unrestricted agricultural and municipal recycled uses, or dedicated for Delta ecosystem needs. Revenue generated from the sale of this high quality water could help offset much of the high costs associated with the upgrades at SRCSD's water treatment plant that will be necessary to meet the stringent treatment levels currently being proposed by the Central Valley Regional Water Quality Control Board. Without another source of funding, monthly sewer bills could triple for SRCSD ratepayers and new construction sewer hook-up fees could quadruple. As more and more employers fall victim to the burdened economy, leading to more out of work Californians, now is not the time to saddle residential and business ratepayers with arduous and excessive cost increases.

The Sacramento Metro Chamber is the largest, oldest and most prominent voice of business in the greater Sacramento area. Representing over 2,000 member businesses and business organizations in the six-county Sacramento region, the Sacramento Metro Chamber serves as the region's leading proponent of regional cooperation and primary advocate on issues affecting business, economic development and quality of life.

Again, on behalf of the Metro Chamber, I would like to express our strong support for AB 134, as it seeks to increase opportunities for the district to offset costs through the sale and transfer of the high quality reclaimed water it produces. This piece of legislation is critical to insulating the Sacramento region from the perilous impacts of the new wastewater discharge permit which greatly overreaches at the expense of the region's already strained economy.

Sincerely,

Martha Clark Lofgren
Interim President & CEO

**Cucamonga Valley Water District
Eastern Municipal Water District
Irvine Ranch Water District
Metropolitan Water District of Southern California
Three Valleys Municipal Water District
Upper San Gabriel Valley Municipal Water District**

June 16, 2011

The Honorable Fran Pavley
California State Senate
State Capitol, Room 4035
Sacramento, CA 95814

Re: AB 134 (Dickinson): Sacramento Regional County Sanitation District – **OPPOSE**
Senate Natural Resources and Water Committee: June 28, 2011

Dear Senator Pavley:

We, the signatories to this letter, regret to inform you of our continued opposition to AB 134 by Assembly Member Roger Dickinson. AB 134 would help the Sacramento Regional County Sanitation District (SRCSD) secure a revenue stream to offset costs related to their treatment plant upgrades. The bill authorizes SRCSD to apply to the State Water Resources Control Board for an appropriative right for the sale and transfer of some of SRCSD’s treated effluent as water supply.

In December 2010, the Central Valley Regional Water Quality Control Board issued a new discharge permit for SRCSD’s 18 million-gallon per day wastewater treatment plant. The new permit requires nitrification/denitrification and tertiary filtration upgrades, which SRCSD claims could cost upwards of \$2 billion.

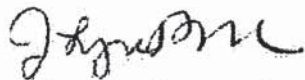
Although several of our previous concerns have been addressed in amendments to the bill, we remain opposed due to the precedent it creates as other wastewater dischargers would be encouraged to seek similar authorization to appropriate their effluent discharges. In addition, we are concerned that the “market opportunities” the bill would provide to SRCSD can actually serve as a disincentive for water conservation in the region.

We fully recognize and appreciate the challenges before SRCSD ratepayers to invest in infrastructure improvements to address ecosystem and water quality challenges in Sacramento-San Joaquin Delta. A comprehensive solution, which includes clean-up of wastewater discharges, will be necessary to restore the Delta environment.

Opposition Letter on AB 134 (Dickinson)
Page 2
June 16, 2011

Although we continue to work with the author and sponsor to address our concerns, we remain opposed to AB 134.

Sincerely,



Jo Lynne Russo-Pereyra
Asst. General Manager of External
Affairs
Cucamonga Valley Water District



Jeff Kightlinger
General Manager
Metropolitan Water District of
Southern California



Tony Pack
General Manager
Eastern Municipal Water District



Richard Hansen
Gen. Mgr./ Chief Engineer
Three Valleys Municipal Water District



Paul D. Jones II
General Manager
Irvine Ranch Water District



Shane Chapman
General Manager
Upper San Gabriel Valley Municipal
Water District

cc: Members of the Senate Natural Resources and Water Committee
Dennis O'Connor, Consultant, Senate Natural Resources and Water Committee
Steve McCarthy, Consultant, Senate Republican Caucus
Assembly Member Roger Dickinson

Inferim County Executive
Steven C. Szalay

Legislative Advocate
Leslie A. McFadden



Board of Supervisors
Phillip R. Serna, District 1
Jimmie Yee, District 2
Susan Peters, District 3
Roberta MacGlashan, District 4
Don Nottoli, District 5

County of Sacramento

June 20, 2011

The Honorable Fran Pavley, Chair
Senate Natural Resources and Water Committee
State Capitol Room 4035
Sacramento, CA 95814

RE: Assembly Bill 134 (Dickinson): SUPPORT As Amended April 15, 2011
Set June 28, 2011 in Senate Natural Resources and Water Committee

Dear Senator Pavley:

On behalf of the Sacramento County Board of Supervisors, I am happy to express the Board's support for the latest amended version of AB 134 (Dickinson) which would enable the Sacramento Regional County Sanitation District (SRCSD) to sell the District's high-quality wastewater to downstream users or to use the water for any beneficial purpose, contingent on the issuance of a permit from the State Water Resources Control Board. All five members of the Sacramento County Board of Supervisors are members of the sixteen-member SRCSD.

The need for this bill results from the terms of a wastewater discharge permit the Central Valley Regional Water Quality Control Board issued in December 2010. As a result of this permit, our District must make major upgrades to our wastewater treatment facilities at an estimated \$2 billion cost to local ratepayers for water that will flow into the Delta. These costs will create a significant economic burden on residents, businesses, and industry in the Sacramento region.

AB 134 provides the District with the opportunity to offset the costs of local compliance with state permit requirements that will benefit other parts of the state. The bill provides a reasonable approach to address a local problem while also ensuring that existing water rights are protected. The SWRCB retains its authority to determine if a permit will be granted and to subject a permit to terms and conditions to protect other legal water users, including the environment.

For all these reasons, we support AB 134. If I can provide any additional information, I can be reached at 916-874-3578.

Sincerely,


Leslie A. McFadden
Legislative Advocate

cc: Assembly Member Roger Dickinson
Members and Consultants, Senate Natural Resources and Water Committee



Louie Brown, Jr.
(916)448-3826

KAHN, SOARES & CONWAY, LLP
ATTORNEYS AT LAW

EMAIL:
lbrown@kscsacramento.com

June 21, 2011

Honorable Roger Dickinson
California State Assembly
State Capitol, Room 3126
Sacramento, CA 95814

RE: AB 134 (Dickinson) – Remove Opposition

Dear Assembly Member Dickinson:

On behalf of our client, Friant Water Authority, I write to express the removal of their opposition to AB 134.

Please contact me if you have any questions or concerns regarding this bill.

Sincerely,

KAHN, SOARES & CONWAY, LLP

A handwritten signature in cursive script that reads 'Louie A. Brown, Jr.'.

Louie A. Brown, Jr.

State Building and Construction Trades Council of California

ROBERT L. BALGORTH
PRESIDENT

JAMES W. KELLOGG
SECRETARY/TREASURER

June 27, 2011

Chartered by
BUILDING AND CONSTRUCTION TRADES
DEPARTMENT
AFL - CIO

The Honorable Fran Pavley
Chair, Senate Natural Resources and Water Committee
State Capitol, Room 4035
Sacramento, CA 95814

RE: AB 134 (Dickinson) – SUPPORT

Dear Senator Pavley:

On behalf of the State Building and Construction Trades Council of California, AFL-CIO, I write to express our support for AB 134 (Dickinson), which would enable the Sacramento Regional County Sanitation District to apply for the right to appropriate an amount of water from the Sacramento River that it currently treats.

In December of 2010, State water regulators adopted a new discharge permit for Sacramento's Regional Wastewater Treatment Plant. This change requires the District perform upgrades that reach a cost of approximately \$2 billion. Without an alternative financing plan, rate increases for local businesses and consumers, and new sewer connection fees for homes and businesses will significantly increase causing harm to an already fragile local economy.

The Regional Sanitation District currently treats about 151 million gallons of wastewater daily. Under AB 134, this high-quality water could become a valuable asset to downstream agriculture and municipal users. At today's rates, water transfers resulting from AB 134 would generate tens of millions annually which can be used to offset the cost of the needed treatment plant upgrades.

We believe AB 134 presents an opportunity to help finance this important infrastructure project, which will result in improved water quality while also providing employment opportunities for the building and construction trades. For these reasons, we respectfully urge your support of AB 134 (Dickinson). Thank you for your consideration.

Sincerely,



CESAR DIAZ
Legislative Director

CD:mb
opeiu#29/afl-cio

cc: Members, Senate Natural Resources and Water Committee
The Honorable Roger Dickinson, California State Assembly

1225-8th Street, Suite 375 • Sacramento, CA 95814 • (916) 443-3302 • FAX (916) 443-8204



SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

FRAN PAVLEY, Chair
State Capitol, Room 4035
Phone: 651-4116
Fax: 323-2232

BACKGROUND INFORMATION REQUEST

Your bill has been referred to the Senate Natural Resources and Water Committee. It is imperative that you provide us with as much information regarding your bill as soon as possible.

Bill Number: AB 134
Author: Dickinson, Roger
Consultant: David Gonsalves, Chief-of-Staff

1. SOURCE AND BACKGROUND OF BILL:

- a) Name and phone number of the person in your office to contact regarding this bill.

David Gonsalves, 319-2009

- b) What is the source of the bill? What, if any, person, organization or governmental entity requested introduction of this bill? Please include phone numbers.

AB 134 is sponsored by and was introduced on behalf of the Sacramento Regional County Sanitation District (SRCSD). The contact persons for the sponsor include: (1) Stan Dean, SRCSD District Engineer, 916/876-6105, deans@sacsewer.com; (2) Craig Johns, Lobbyist for SRCSD, 916/718-5490, cjohns@calrestrats.com; and (3) Barry Broad, Lobbyist for SRCSD, 916/205-4275, broad@bglaw.org

- c) Has a similar bill been before the Legislature? If so, please identify the session, bill number, prior committee and disposition of the bill.

There is currently no *existing law* on the issue of the right of SRCSD to file a water right application to appropriate water equal to the volume of its discharge to the Sacramento River; however, a similar law exists with respect to water rights applications filed by municipal agencies that operate wastewater treatment plants that discharge into the San Joaquin River. (See, Water Code §1485, added by Stats. 1961, Chap. 2143, p. 4419, §1; amended by Stats. 1967, Chap. 284, p. 1446, §8.)

- d) Please attach copies of any background material in explanation of this bill for reference by Committee staff, including any sources documenting the problem this bill seeks to correct.

Purpose of AB 134: The purpose of AB 134 is to enable SRCSD to file an application with the State Water Resources Control Board for a permit to appropriate an amount of water that is equal to the volume of treated wastewater discharged to the Sacramento River, less diminution by seepage, evaporation, transpiration, or other natural causes between the point of discharge from the SRCSD treatment plant and the point of diversion out of the river or the Sacramento-San Joaquin Delta. AB 134 would require the State Board to issue the permit, subject to specific terms and

conditions as in the Board's judgment are necessary to protect the rights of any legal user of the water involved.

Existing Law on this Topic: Water Code §1210 provides that “[t]he 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 ... unless otherwise provided by agreement.” This provision was added to the Water Code in 1980 at the recommendation of the Governor Jerry Brown’s Commission to Review California Water Rights Law, and was specifically included to encourage the sale and distribution of recycled water. (See, e.g., Governor’s Commission to Review California Water Rights Law - *Final Report*, December, 1978, pp. 62-66. Hereafter, “Commission Report”.) Specifically, the Commission noted, “Advances in wastewater reclamation technology and increasingly stringent water quality standards have created an opportunity for an expanded market in treated effluent. (Commission Report at p. 63.) And while the Commission acknowledged that the sale and distribution of recycled water may raise water rights questions regarding ownership of the treated wastewater, it nonetheless concluded that is “desirable to concentrate the ownership of the resource in one entity rather than multiple entities, such as the water suppliers.” (Commission Report at p. 64.) There is currently no *existing law* on the issue of the right of SRCSD to file a water right application to appropriate water equal to the volume of its discharge to the Sacramento River; however, a similar law exists with respect to water rights applications filed by municipal agencies that operate wastewater treatment plants that discharge into the San Joaquin River. (See, Water Code §1485, added by Stats. 1961, Chap. 2143, p. 4419, §1; amended by Stats. 1967, Chap. 284, p. 1446, §8.) Further, the State Board issued Permit 21176 to the City of Stockton on December 20, 2005, thus approving an appropriation of a stated volume of water. (See, *In re: Petition for Reconsideration of the Approval of Application 30531A and the Issuance of Permit 21176 to the City of Stockton*, SWRCB Order WR-2006-0007, March 8, 2006.

Some parties argue that treated wastewater discharged to a surface water body by a municipal treatment agency constitute “return flows” over which the municipal treatment agency has no dominion or right, and which cannot therefore be appropriated by the treatment agency because to do so would infringe on the legal rights of “downstream users” of those return flows. The argument is flawed for at least two reasons. First, under long-established California Supreme Court precedent, “imported water” (such as groundwater) may be recaptured by an upstream water user and the water right thereto transferred to a third party even to the detriment of downstream users. (See, Commission Report at p. 64, citing *Stevens v. Oakdale Irrigation District*, 13 Cal.2d 343, 352 (1939) and *Los Angeles v. San Fernando*, 14 Cal.3d 199, 256-58 (1975).) Under this doctrine, a wastewater treatment agency would have the right to recapture and transfer the water rights attendant to at least that portion of its treated wastewater that is attributable to groundwater and other imported water. In the case of SRCSD, this volume has been estimated to be approximately 50% of the water collected and treated at its wastewater treatment plant.

Second, and perhaps more significantly, discharges of treated wastewater by a municipal treatment agency do not constitute “return flows” as contemplated under various water rights doctrines and, as such, municipal wastewater treatment agencies have the legal right to recapture treated wastewater and freely transfer the water rights thereto. Return flow rules originated in mining and irrigation cases (see, e.g., *Southern California Investment Co. v. Wilshire*, 144 Cal. 68, 72-73 (1904) (agricultural return flows) and *Eddy v. Simpson*, 3 Cal. 249 (1853) (mining return flows)), and generally relate to the unconsumed portion of water that has returned to the natural flow of a stream. (See, e.g., *Anaheim Union Water Co. v. Fuller*, 150 Cal. 327, 330 (1907).) Unlike these traditional sources of “return flows”, however, 100% of the water that reaches a municipal wastewater treatment plant originates as the consumed portion of municipal water deliveries, resulting in wastewater that is, **by law**, not useable or dischargeable without first being treated by the wastewater treatment agency. (Water Code §§13525.5; 13529.2) It is the very act of performing costly treatment of wastewater that converts it into a useable or “new supply” of water. (Water Code §13511.)

In any event, the issue of whether wastewater treatment plant discharges are “return flows” to which other, downstream users may have legal claims over need not be resolved at the present time. Indeed, proposed new Water Code §1486 contained in AB 134 allows the State Water Board to impose conditions in any future water right issued to SRCSD in order to protect the rights of any legal user of the water involved.

Need for AB 134: This legislation would provide an additional procedural option for SRCSD to realize the benefit of its treated wastewater discharges. Depending on the outcome of its anticipated permit application to the State Board to appropriate water up to an amount equal in volume to its discharge, SRCSD could potentially market that water to willing purchasers, thereby offsetting part of what has been estimated to be nearly \$2.1 billion in treatment plant upgrades that will be necessary to comply with recent regulatory actions taken by the Central Valley Regional Water Quality Control Board (“Regional Board”).

On December 8, 2010, the Regional Board issued Order R5-2010-0114, and adopted a new wastewater discharge permit for SRCSD’s ongoing treatment and discharge of up to 181 million gallons per day (approximately 200,000 acre-feet per year) of municipal wastewater for approximately 1.3 million people in the Sacramento Region.

(http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/sacramento/r5-2010-0114_npdes.pdf) In particular, the new permit will require SRCSD to meet stringent new regulatory limits that have heretofore *not* been imposed on similarly situated municipal wastewater dischargers in the Central Valley. (See, Attachment XX.)

A recent review of permit decisions taken by the Central Valley Regional Board in a four-year period between January 1, 2007 and December 31, 2010 reveals that the Regional Board adopted 64 NPDES permits for municipal wastewater dischargers and of those, 22 were issued to dischargers with receiving water dilution measured to be at least 20 times the volume of the discharge of treated wastewater. This 20:1 dilution threshold is significant under guidance issued by the Department of Public Health in 1999, which is the dispositive trigger for requiring tertiary treatment of municipal wastewater being discharged to surface waters in California. That DPH guidance is routinely used and relied upon by Regional Boards throughout California in setting pathogens-related treatment standards which municipal wastewater agencies are required to meet. Of the 22 permits issued by the Central Valley Regional Board to dischargers with the minimum 20:1 dilution, only one - - SRCSD’s - - included permit limits that ignored the DPH guidance, instead imposing higher treatment levels. The administrative record attendant to the permit action taken by the Central Valley Regional Board contains many statements, testimony, and written comment letters from legislators, local elected officials, and water interests served by the State and Federal Water Projects that the stringent permit requirements imposed on SRCSD were necessary to protect those communities and water users relying on Delta-supplied water for municipal and agricultural uses.

As a result of the permit action taken by the Central Valley Regional Board, SRCSD has ten years to plan, design, finance, review (under CEQA), and then construct new treatment systems in order to meet the stringent limits imposed, at a preliminary cost estimate of approximately \$2.1 billion. In order to ensure compliance with the final limits imposed by the Regional Board Order, SRCSD has already begun the process that will lead to operation of the treatment plant upgrades, and is now seeking opportunities to offset some of the enormous construction costs. If approved, AB 134 would provide SRCSD an opportunity to seek a water right which could then be marketed to willing buyers of up to 200,000 acre-feet of water each year.

- e) Please list likely support and opposition. Please attach copies of letters of support or opposition you have received.

Supporters:

American Rivers
The Nature Conservancy

California Teamsters Public Affairs Council
California State Bldg and Constr. Trades Council

North State Building Industry Association
Rental Housing Assn
Central Contra Costa Sanitary District
California League of Food Processors
California Apartment Association
California Association of Sanitation Agencies
City of Sacramento
City of Citrus Heights
City of Elk Grove
City of West Sacramento

City of Rancho Cordova
Sacramento County
Sacramento Metropolitan Chamber of Commerce
Downtown Sacramento Business Partnership
The River District
MidTown Business Association
Campbell's Food
Colliers International
NorCal Beverage
Congresswoman Doris Matsui

Previous Opposition Removed:

Alameda County Flood Control and Water
Conservation Dist. Zone 7
Alameda Water District
Association of California Water Agencies (ACWA)
Burbank Water & Power
California Chamber of Commerce
Contra Costa Water District
Castaic Lake Water Agency
California Municipal Utilities Association
Chambers of Commerce Alliance, Ventura, Santa
Barbara Counties
Downey Chamber of Commerce
Contra Costa Water District
El Monte South Elm Monte Chamber
Inland Empire Utilities Agency
Irwindale Chamber of Commerce

La Verne Chamber of Commerce
Long Beach Area Chamber of Commerce
Mojave Water Agency
Redondo Beach Chamber of Commerce & Visitor
Bureau
Regional Chamber of Commerce – San Gabriel
Valley
San Diego County Water Authority
San Gabriel Valley Economic Partnership
San Gabriel Valley Legislative Coalition of
Chambers
Southern California Water Committee
Three Valleys Municipal Water District
Water Reuse California
Western Municipal Water District
Westlands Water District

2. AMENDMENTS PRIOR TO HEARING:

Substantive amendments shall be submitted to the Committee Secretary (in Legislative Counsel form) at least 7 calendar days prior to the hearing. Please deliver the signed original and 11 copies of amendments to the Committee Assistant – State Capitol, Room 4035 AND 1 copy to the Republican Policy Consultant.

- a) If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.

No amendments are anticipated for AB 134 prior to the hearing.

3. WITNESSES TO TESTIFY AT HEARING:

- a) List the witnesses you plan to have testify.

Stan Dean, District Engineer for SRCSD, will present with Assembly Member Dickinson and will be available for questions and to address any technical issues. Additional witness availability is being confirmed, and names will be provided to Senate Natural Resources & Water Committee staff prior the hearing.

PLEASE COMPLETE AND RETURN TWO COPIES WITHIN SEVEN (7) LEGISLATIVE DAYS OF RECEIPT OF THIS FORM. THE CHAIR MAY REFUSE TO HEAR A BILL, EVEN THOUGH IT HAS BEEN SET, IF THE AUTHOR FAILS TO PROMPTLY RETURN A COMPLETED WORKSHEET.

PLEASE RETURN THIS FORM TO:

Patricia Hanson, Committee Assistant
Senate Natural Resources and Water
State Capitol, Room 4035
Sacramento, CA 95814

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

SENATE COMMITTEE ON NATURAL RESOURCES AND WATER
Senator Fran Pavley, Chair
2011-2012 Regular Session

BILL NO: AB 134

AUTHOR: Dickinson

VERSION: April 15, 2011

DUAL REFERRAL: No

SUBJECT: Appropriation of Water: Sacramento Regional County Sanitation District

HEARING DATE: June 28, 2011

URGENCY: No

CONSULTANT: Dennis O'Connor

FISCAL: Yes

BACKGROUND AND EXISTING LAW

Under existing law:

- Any person or entity may apply to the State Water Resources Control Board (SWRCB) for a permit to appropriate water.
- The board may issue a permit to appropriate water to any applicant provided, among other things, that the water is put to a reasonable and beneficial use, the exercising of the rights under the permit would not harm any other legal water rights holder, and the exercising of the right would not unreasonably harm fish and wildlife. The State Water Board is further authorized to impose conditions on the permits to ensure those protections are realized.
- The board must reject an application to appropriate water when in its judgment the proposed appropriation would not best conserve the public's interests.
- The owner of a waste water treatment plant has the exclusive right to the treated wastewater.

Also under existing law, there is a clearly delineated process for:

- Petitioning the board to change the point of water diversion and/or place of use of appropriated water.
- Petitioning the board to transfer or exchange water or water rights on either a short term or long term basis.
- Petitioning the board to change the point of discharge, place of use, or purpose of use of treated wastewater.

PROPOSED LAW

This bill would:

- Authorize the Sacramento Regional County Sanitation District (Sac Regional) to apply for a permit to appropriate an amount of water up to the amount of treated wastewater that is discharged into the Sacramento River.
- Authorize the SWRCB to 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.
- Require the SWRCB to comply with the provisions of the water code governing the appropriation of surface water and other applicable law, and authorize the board to impose terms and conditions authorized under those laws.
- Allow water appropriated under the provisions of this bill to be sold or utilized for any beneficial purpose.

Declare that a special law is necessary because of the unique problems applicable to the full utilization of the waters of the Sacramento River and the Sacramento-San Joaquin Delta, into which flows treated wastewater discharged by Sac Regional.

ARGUMENTS IN SUPPORT

According to the author, "This legislation would provide an additional procedural option for [Sac Regional] to realize the benefit of its treated wastewater discharges. Depending on the outcome of its anticipated permit application to the State Board to appropriate water up to an amount equal in volume to its discharge, [Sac Regional] could potentially market that water to willing purchasers, thereby offsetting part of what has been estimated to be nearly \$2.1 billion in treatment plant upgrades that will be necessary to comply with recent regulatory actions taken by the Central Valley Regional Water Quality Control Board ('Regional Board')."

ARGUMENTS IN OPPOSITION

Six Southern California water agencies submitted a letter stating "Although several of our previous concerns have been addressed in amendments to the bill, we remain opposed due to the precedent it creates as other wastewater dischargers would be encouraged to seek similar authorization to appropriate their effluent discharges. In addition, we are concerned that the 'market opportunities' the bill would provide to SRCSD can actually serve as a disincentive for water conservation in the region."

COMMENTS

Is This Bill Necessary? Part 1. Current law already authorizes everything authorized in this bill and all actions the sponsor purportedly is contemplating. It is not clear what additional powers, duties, or authorities this bill would create, if any.

Is This Bill Necessary? Part 2. Given the recent Regional Board requirement that Sac Regional upgrade its waste water treatment system, Sac Regional is understandably exploring numerous options to develop additional funding sources to help offset its estimated \$2.1 billion price tag. However, at this point Sac Regional does not have a specific project in mind. Instead, it is exploring its various project options. Consequently, it is not clear what changes in current law would be necessary or desirable to aid Sac Regional's ultimate project or projects.

Camel's Nose? A number of other upstream Sacramento River interests have expressed interest to the sponsors, either directly or indirectly, in having similar authorizations as provided by this bill. Should this bill be enacted, it would not be surprising to see similar such bills introduced in the not so distant future.

Based on §1485. The new section added by this bill is patterned after §1485, which granted similar authorities to any wastewater treatment plants that disposed of water into the San Joaquin River. That section was created in 1961 and last amended in 1967 – before water law was expanded to address issues of water recycling, short and long term water transfers, etc.

Status of Opposition. When this bill was first analyzed in Assembly Water Parks & Wildlife, the analysis listed 52 entities in opposition. Since then, the author has substantially amended the bill. This committee is in possession of letters removing opposition from 22 of the 52 previous opponents. Of the remaining 30, this committee has letters reaffirming their opposition from 5 entities (including one that previously withdrew its opposition) and one new opponent. It is not clear what the current position of the other 25± previously opposed entities is.

SUGGESTED AMENDMENTS: None

SUPPORT

Sacramento Regional County Sanitation District (Sponsor)
American Rivers
California Apartment Association
California Association of Sanitation Agencies
California League of Food Processors
California Teamsters Public Affairs Council
Campbell Soup Company
Central Contra Costa Sanitary District
City of Citrus Heights
City of Elk Grove
City of Rancho Cordova
City of Sacramento
City of West Sacramento
Congresswoman Doris Matsui
County of Sacramento
County of Yolo
Downtown Sacramento Partnership
Marriott Cal Expo Properties
Midtown Business Association
Nor-Cal Beverage Co., Inc.
North State Building Industry Association
Rental Housing Association of Sacramento Valley
Sacramento Metro Chamber
The Nature Conservancy
The River District

OPPOSITION

Cucamonga Valley Water District
Eastern Municipal Water District
Irvine Ranch Water District
Metropolitan Water District of Southern California
Three Valleys Municipal Water District
Upper San Gabriel Valley Municipal Water District

BM



CALIFORNIA TEAMSTERS PUBLIC AFFAIRS COUNCIL

1127 ELEVENTH STREET, SUITE 501
SACRAMENTO, CALIFORNIA 95814

(916) 446-0291

FAX (916) 446-9321

E-MAIL: INFO@TEAMSTERCTPAC.ORG

WWW.CATEAMSTERS.COM

EXECUTIVE BOARD

ROME ALOISE

CO-CHAIRMAN - PRESIDENT

JOINT COUNCIL NO. 7

250 EXECUTIVE PARK BLVD., STE. 3100

SAN FRANCISCO, CA 94134

RANDY CAMMACK

CO-CHAIRMAN - PRESIDENT

JOINT COUNCIL NO. 42

818 OAK PARK ROAD, STE 250

COVINA, CA 91724

POLICY COMMITTEE

JOINT COUNCIL NO. 7

HARTY FRATES

OAKLAND

RUDY HERNANDEZ

BAKERSFIELD

DAVE HAWLEY

REDDING

JIM TOBIN

SACRAMENTO

BILL HOYT

SAN JOSE

DALE ROBBINS

MARTINEZ

ROBERT MORALES

SAN FRANCISCO

GAYLORD PHILLIPS

MODESTO

DARRELL PRATT

FRESNO

SAM ROSAS

STOCKTON

SCOTT LUPO

VISALIA

LUCIO REYES

STOCKTON

RAFAEL MIRANDA

SANTA ROSA

ERNIE YATES

DALY CITY

JOE LANTHIER

SAN BRUNO

TONY GONZALES

SALINAS

BRAD SEBRING

WATSONVILLE

LUPE JUAREZ

MODESTO

JACK BOOKTER

SAN FRANCISCO

JOINT COUNCIL NO. 42

ART CANTU

SAN DIEGO

MIKE BERGEN

BLOOMINGTON

BILL ELDER

VENTURA

LYNN SWENSON

SANTA MARIA

RON HERRERA

COVINA

BO REED

V HOLLYWOOD

VICTOR TORRES

SAN DIEGO

ROBERT LENNOX

COVINA

JAIME VASQUEZ

SAN DIEGO

LUCK MIDDLETON

CARSON

AUL KENNY

OS ANGELES

BOB MENDEZ

SAN DIEGO

ERIC TATE

ONG BEACH

LENE MEDRANO

OS ANGELES

RAY WHITMER

ELFLOWER

ATRICK KELLY

RANGE

CHRIS GRISWOLD

EL MONTE

BARRY BROAD

LEGISLATIVE DIRECTOR

MARSI NEWMAN

PUBLIC AFFAIRS ADMINISTRATOR

HANE GUSMAN

LEGISLATIVE REPRESENTATIVE

To: All Members of the Senate Appropriations Committee

From: Barry Broad
Shane Gusman
Marcie Berman

Date: June 29, 2011

Subject: AB 134 (Dickinson)-SUPPORT

On behalf of the California Teamsters Public Affairs Council, we are writing to express support for AB 134 by Assembly Member Roger Dickinson. This bill would ensure that Sacramento is able to negotiate bilateral agreements so as to sell treated water and relieve taxpayers and rate payers from the burden of subsidized water clean-up.

CTPAC supports this bill because it would enhance the financial integrity of our water system and, also, because it would protect the jobs of Teamster members who work in this industry.

CTPAC urges your "aye" vote on this bill.

cc: Assembly Member Roger Dickinson

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 134
Author: Dickinson (D), et al.
Amended: 4/15/11 in Assembly
Vote: 21

SENATE NATURAL RES. AND WATER COMMITTEE: 8-0, 6/28/11
AYES: Pavley, La Malfa, Cannella, Fuller, Kehoe, Padilla, Simitian, Wolk
NO VOTE RECORDED: Evans

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 42-23, 5/26/11 - See last page for vote

SUBJECT: Appropriation of water: Sacramento Regional County
Sanitation District

SOURCE: Sacramento Regional County Sanitation District

DIGEST: This bill allows the Sacramento Regional County Sanitation District to apply for a permit from the State Water Resources Control Board to appropriate an amount of water up to the amount of discharged wastewater.

ANALYSIS:

Existing law:

1. Provides that the owner of a wastewater treatment plant shall hold the exclusive right to the treated wastewater.

CONTINUED

2. Requires approval from the State Water Resources Control Board (SWRCB) for a change in the point of discharge, place of use, or purpose of use of treated wastewater, unless such change does not decrease flow in any portion of a watercourse.
3. Protects wastewater which has been introduced into the watercourse with the intention of maintaining or enhancing fishery, wildlife, recreational or other instream beneficial uses from being treated as abandoned and subject to appropriation by others.
4. Allows waste disposal plants discharging into the San Joaquin River to apply for a permit to appropriate up to an amount of water equivalent to the discharge less carriage losses and to sell or utilize that water for any beneficial purpose.

This bill:

1. Allows the Sacramento Regional County Sanitation District (SRCSD) to file an application with the SWRCB for a permit to appropriate an amount of water equal to the amount of treated wastewater discharged, less carriage losses, for diversion out of the Sacramento River or Sacramento-San Joaquin Delta.
2. Clarifies that any permit granted by the SWRCB will be subject to the terms and conditions authorized under applicable law.
3. Declares a special law is necessary due to the unique problems applicable to full utilization of the waters of the Sacramento River into which the SRCSD discharges treated wastewater.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 7/11/11)

Sacramento Regional County Sanitation District (source)
American Rivers
California Apartment Association
California Association of Sanitation Agencies
California League of Food Processors
California Teamsters Public Affairs Council
Campbell Soup Company

CONTINUED

Central Contra Costa Sanitary District
 Cities of Citrus Heights, Elk Grove, Rancho Cordova, Sacramento, and West
 Sacramento

Congresswoman Doris Matsui

County of Sacramento

County of Yolo

Downtown Sacramento Partnership

Marriott Cal Expo Properties

Midtown Business Association

Nor-Cal Beverage Co., Inc.

North State Building Industry Association

Rental Housing Association of Sacramento Valley

Sacramento Metro Chamber

The Nature Conservancy

The River District

OPPOSITION: (Verified 7/11/11)

Cucamonga Valley Water District

Eastern Municipal Water District

Irvine Ranch Water District

Metropolitan Water District of Southern California

Three Valleys Municipal Water District

Upper San Gabriel Valley Municipal Water District

ARGUMENTS IN SUPPORT: According to the author, “This legislation would provide an additional procedural option for [Sac Regional] to realize the benefit of its treated wastewater discharges. Depending on the outcome of its anticipated permit application to the State Board to appropriate water up to an amount equal in volume to its discharge, [Sac Regional] could potentially market that water to willing purchasers, thereby offsetting part of what has been estimated to be nearly \$2.1 billion in treatment plant upgrades that will be necessary to comply with recent regulatory actions taken by the Central Valley Regional Water Quality Control Board (‘Regional Board’).”

ARGUMENTS IN OPPOSITION: Six Southern California water agencies submitted a letter stating “Although several of our previous concerns have been addressed in amendments to the bill, we remain opposed due to the precedent it creates as other wastewater dischargers would be encouraged to seek similar authorization to appropriate their effluent discharges. In addition, we are concerned that the ‘market opportunities’ the

CONTINUED

bill would provide to SRCSD can actually serve as a disincentive for water conservation in the region.”

ASSEMBLY FLOOR: 42-23, 5/26/11

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Campos, Chesbro, Dickinson, Feuer, Fong, Fuentes, Furutani, Gatto, Hayashi, Hill, Huber, Hueso, Huffman, Logue, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Olsen, Pan, Perea, Portantino, Skinner, Swanson, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Grove, Hagman, Halderman, Harkey, Jeffries, Knight, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Silva, Smyth, Torres, Valadao, Wagner

NO VOTE RECORDED: Charles Calderon, Carter, Cedillo, Davis, Eng, Galgiani, Garrick, Gordon, Gorell, Hall, Roger Hernández, Jones, Lara, V. Manuel Pérez, Solorio

CTW:kc 7/11/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

Assembly Bill No. 134

CHAPTER 212

An act to add Section 1486 to the Water Code, relating to water resources.

[Approved by Governor September 6, 2011. Filed with
Secretary of State September 6, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 134, Dickinson. Appropriation of water: Sacramento Regional County Sanitation District.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water.

Existing law requires the owner of a wastewater treatment plant to obtain the approval of the state board prior to making any changes in the point of discharge, place of use, or purpose of use of treated wastewater, and requires the state board to review the proposed changes in accordance with prescribed procedures.

This bill would authorize the Sacramento Regional County Sanitation District to file an application for a permit to appropriate a specified amount of water that is based on the volume of treated wastewater that the district discharges into the Sacramento River, as specified. The bill would authorize the state board to grant a permit to appropriate that treated wastewater upon terms and conditions determined by the state board. The bill would require the board, prior to granting a permit pursuant to these provisions, to comply with permit, approval, and review requirements and other laws applicable to the appropriation of water.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Sacramento Regional County Sanitation District.

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

SECTION 1. Section 1486 is added to the Water Code, to read:

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 California Regional Water Quality Control Board, Central Valley, 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 the 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 Part 2 (commencing with Section 1200) of Division 2, 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.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique problems applicable to the full utilization of the waters of the Sacramento River and the Sacramento-San Joaquin Delta, into which treated wastewater discharged by the Sacramento Regional County Sanitation District flows.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1171
AUTHOR : Harman
TOPIC : Maintenance of the codes.

TYPE OF BILL :

Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY

2012

July 23 Chaptered by Secretary of State. Chapter 162, Statutes of 2012.
July 23 Approved by the Governor.
July 11 Enrolled and presented to the Governor at 10:45 a.m.
July 6 Assembly amendments concurred in. (Ayes 36. Noes 0. Page 4318.)
Ordered to engrossing and enrolling.
July 5 Ordered to special consent calendar.
July 2 In Senate. Concurrence in Assembly amendments pending.
July 2 Read third time. Passed. (Ayes 80. Noes 0. Page 5563.) Ordered to
the Senate.
June 27 Read second time. Ordered to consent calendar.
June 26 From committee: Do pass. Ordered to consent calendar. (Ayes 10. Noes
0.) (June 26).
June 19 Hearing postponed by committee.
May 21 From committee with author's amendments. Read second time and
amended. Re-referred to Com. on JUD.
May 17 Referred to Com. on JUD.
May 10 In Assembly. Read first time. Held at Desk.
May 10 Read third time. Passed. (Ayes 37. Noes 0. Page 3470.) Ordered to
the Assembly.
May 3 Read second time. Ordered to consent calendar.
May 2 From committee: Do pass. Ordered to consent calendar. (Ayes 5. Noes
0. Page 3389.) (May 1).
Apr. 20 Set for hearing May 1.
Mar. 1 Referred to Com. on JUD.
Feb. 23 From printer. May be acted upon on or after March 24.
Feb. 22 Introduced. Read first time. To Com. on RLS. for assignment. To
print.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

Introduced by Senator HarmanFebruary 22, 2012

An act to amend Sections 2313, 7068.2, 12241, 19607.5, 19852.2, 19853, 23393.5, and 25503.56 of the Business and Professions Code, to amend Sections 55.3, 1368, and 2983 of the Civil Code, to amend Sections 527.6, 527.8, 527.85, 1287, 1514, and 2024.040 of the Code of Civil Procedure, to amend Sections 500, 2900, 6210, 8210, 12570, and 14301.3 of the Corporations Code, to amend Sections 234.1, 8483.76, 8499.5, 12000, 12001, 41202, 41202.5, 42251, 42605, 48204.1, 49061, 51500, 51501, 54699, 60044, 69508.5, 71091, 72699, 76300, and 89918 of the Education Code, to amend Sections 2196, 3206, and 18106 of, and to repeal Section 2168 of, the Elections Code, to amend and renumber Section 9213 of the Family Code, to amend Section 14101.6 of the Financial Code, to amend Section 8276.5 of the Fish and Game Code, to amend Sections 27551 and 30801 of the Food and Agricultural Code, to amend Sections 1322, 3540.1, 6208.2, 6218.01, 7572, 7582, 8310.7, 12011.5, 12172.5, 14502, 17280.3, 25825.5, 30025, 53395.3.5, 53395.81, 53760.3, 53891, 57077, 57150, 57534, 61105, 65863.10, 65863.11, and 76000.10 of, and to amend and renumber Sections 66499.20 $\frac{1}{4}$, 66499.20 $\frac{1}{2}$, and 66499.20 $\frac{3}{4}$ of, the Government Code, to amend Section 1156.6 of the Harbors and Navigation Code, to amend Sections 1367.241, 1374.74, 1527.3, 11357.5, 11364, 25160, 34163, 34167.5, 34173, 34176, 34188.8, 34189, 34194.4, 34195, 100425, 113789, 116565, 121690, 127405, and 136000 of, and to repeal Section 1461 of, the Health and Safety Code, to amend Sections 1760.1, 1763, 1764.1, 1765.1, 1765.2, 1768, 1774, 1775.5, 10123.191, 10144.51, 10192.12, 10509.912, and 11780.5 of the Insurance Code, to amend Sections 226.8 and 1308.10 of the Labor Code, to amend Sections 136.2, 243, 336.5, 429, 597.4, 629.62, 830.5, 1370, 2602, 2932, 3060.7, 3453, 4807, 11105, 11105.03, 11165.7, and 13750 of, and to amend and

renumber Sections 21, 22, and 25.5 of, the Penal Code, to amend Sections 4461, 7660, and 13600 of the Probate Code, to amend Section 10490 of the Public Contract Code, to amend Sections 2762, 4214, 4514.5, 4527, 4551.5, 4561, 21092, 21108, 21152, 21167.6.5, and 25747 of the Public Resources Code, to amend Sections 278, 366.2, 381.1, 395.5, 399.11, 399.12, 399.18, 2775.6, 2830, 2851, 2881.1, 2881.2, and 8283 of the Public Utilities Code, to amend Sections 214.02, 3725, 17053.85, 17085, 17282, 19191, 24436.1, 30459.15, and 50156.18 of, to amend the heading of Article 9 (commencing with Section 6850) of Chapter 6 of Part 1 of Division 2 of, and to amend and renumber Section 17131.10 of, the Revenue and Taxation Code, to amend Section 1962.4 of the Streets and Highways Code, to amend Section 679 of, and to repeal Article 2 (commencing with Section 10521) of Chapter 4.5 of Part 1 of Division 3 of, the Unemployment Insurance Code, to amend Sections 11713.3, 12804.11, 23575, and 40240 of the Vehicle Code, to amend Sections 1486, 10753, and 74209 of the Water Code, to amend Sections 319, 366.21, 391, 712, 912, 4512, 4514, 4640.6, 4641.5, 4646.5, 4659.13, 4659.23, 4688.21, 4689, 5720, 8103, 10980, 11451.5, 11461, 11463, 12301.03, 12301.07, 12305.87, 14053.8, 14053.9, 14105.09, 14105.193, 14132.957, 14165, 14165.56, 14165.57, 14166.12, 14166.20, 14168.1, 14168.11, 14169.1, 14182, 14589, 14701, 15657.03, 15910, 15911, 15916, 15926, 17600, and 18220.1 of the Welfare and Institutions Code, to amend Sections 59 and 60 of Chapter 7 of the Statutes of 2011, to amend Sections 9 and 34 of Chapter 136 of the Statutes of 2011, to amend Section 2 of Chapter 211 of the Statutes of 2011, to amend Section 1 of Chapter 404 of the Statutes of 2011, to amend Section 17 of Chapter 13 of the First Extraordinary Session of the Statutes of 2011, and to amend Section 2 of Chapter 14 of the First Extraordinary Session of the Statutes of 2011, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as introduced, Harman. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

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

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

1 SECTION 1. Section 2313 of the Business and Professions
2 Code is amended to read:
3 2313. The board shall report annually to the Legislature, no
4 later than October 1 of each year, the following information:
5 (a) The total number of temporary restraining orders or interim
6 suspension orders sought by the board to enjoin licensees pursuant
7 to Sections 125.7, 125.8, and 2311, the circumstances in each case
8 that prompted the board to seek that injunctive relief, and whether
9 a restraining order or interim suspension order was actually issued.
10 (b) The total number and types of actions for unprofessional
11 conduct taken by the board against licensees, the number and types
12 of actions taken against licensees for unprofessional conduct related
13 to prescribing drugs, narcotics, or other controlled substances,
14 including those related to the undertreatment or undermedication
15 of pain.
16 (c) Information relative to the performance of the board,
17 including the following: number of consumer calls received;
18 number of consumer calls or letters designated as discipline-related
19 complaints; number of complaint forms received; number of
20 Section 805 and Section 805.01 reports by type; number of Section
21 801.01 and Section 803 reports; coroner reports received; number
22 of convictions reported to the board; number of criminal filings
23 reported to the division; number of complaints and referrals closed,
24 referred out, or resolved without discipline, respectively, prior to
25 accusation; number of accusations filed and final disposition of
26 accusations through the board and court review, respectively; final
27 physician discipline by category; number of citations issued with
28 fines and without fines, and number of public reprimands issued;
29 number of cases in process more than six months from receipt by
30 the board of information concerning the relevant acts to the filing
31 of an accusation; average and median time in processing complaints
32 from original receipt of complaint by the board for all cases at
33 each stage of discipline and court review, respectively; number of
34 persons in diversion, and number successfully completing diversion
35 programs and failing to do so, respectively; probation violation

1 (d) The registered owner shall be permitted to review the video
2 image evidence of the alleged violation during normal business
3 hours at no cost.

4 (e) (1) Except as it may be included in court records described
5 in Section 68152 of the Government Code, or as provided in
6 paragraph (2), the video image evidence may be retained for up
7 to six months from the date the information was first obtained, or
8 60 days after final disposition of the citation, whichever date is
9 later, after which time the information shall be destroyed.

10 (2) Notwithstanding Section 26202.6 of the Government Code,
11 video image evidence from forward facing automated enforcement
12 devices that does not contain evidence of a parking violation
13 occurring in a transit-only traffic lane shall be destroyed within
14 15 days after the information was first obtained.

15 (f) Notwithstanding Section 6253 of the Government Code, or
16 any other provision of law, the video image records are
17 confidential. Public agencies shall use and allow access to these
18 records only for the purposes authorized by this article.

19 (g) For purposes of this article, “local agency” means the City
20 and County of San Francisco.

21 (h) For purposes of this article, “transit-only traffic lane” means
22 any designated transit-only ~~lanes~~ *lane* on which use is restricted
23 to mass transit vehicles, or other designated vehicles including
24 taxis and vanpools, during posted times.

25 SEC. 184. Section 1486 of the Water Code is amended to read:

26 1486. (a) The Sacramento Regional County Sanitation District,
27 and any successor thereto, with respect to treated wastewater
28 produced by the sanitation district that meets the requirements of
29 the ~~California~~ *Central Valley* Regional Water Quality Control
30 Board, ~~Central Valley~~, as may be amended or modified, and that
31 is discharged into the Sacramento River, may file an application
32 for a permit to appropriate an amount of water up to the amount
33 of treated wastewater that is discharged into the Sacramento River,
34 less diminution by seepage, evaporation, transportation, or other
35 natural causes between the point of discharge from ~~the~~ *its*
36 wastewater treatment plant and the point of diversion out of the
37 Sacramento River or the Sacramento-San Joaquin Delta.

38 (b) Upon application for a permit to appropriate water pursuant
39 to subdivision (a), the board may grant the permit subject to the

1 terms and conditions as in the board's judgment are necessary for
2 the protection of the rights of any legal user of the water.

3 (c) Prior to the board granting a permit under subdivision (b),
4 the board shall comply with the provisions of ~~Part 2 (commencing~~
5 ~~with Section 1200) of Division 2~~ *this part*, and other applicable
6 law, and may impose terms and conditions authorized thereunder.

7 (d) Water appropriated in accordance with this section may be
8 sold or utilized for any beneficial purpose.

9 SEC. 185. Section 10753 of the Water Code is amended to
10 read:

11 10753. (a) Any local agency, whose service area includes a
12 groundwater basin, or a portion of a groundwater basin, that is not
13 subject to groundwater management pursuant to other provisions
14 of law or a court order, judgment, or decree, may, by ordinance,
15 or by resolution if the local agency is not authorized to act by
16 ordinance, adopt and implement a groundwater management plan
17 pursuant to this part within all or a portion of its service area.

18 (b) Notwithstanding subdivision (a), a local public agency, other
19 than an agency defined in subdivision (g) of Section 10752, that
20 provides flood control, groundwater management, or groundwater
21 replenishment, or a local agency formed pursuant to this code for
22 the principal purpose of providing water service that has not yet
23 provided that service, may exercise the authority of this part within
24 a groundwater basin that is located within its boundaries within
25 areas that are either of the following:

26 (1) Not served by a local agency.

27 (2) Served by a local agency whose governing body, by a
28 majority vote, declines to exercise the authority of this part and
29 enters into an agreement with the local public agency pursuant to
30 Section 10750.7 or 10750.8.

31 (c) Except as provided in subdivision (b), this chapter does not
32 authorize a local agency ~~with authority~~ to manage groundwater
33 planning within the service area of another local agency.

34 (d) Except as otherwise provided in this part, the process for
35 developing and adopting a revised groundwater management plan
36 shall be the same as the process for developing and adopting a new
37 groundwater management plan.

38 SEC. 186. Section 74209 of the Water Code is amended to
39 read:

1 addition, of any article, chapter, part, title, or division of any code
2 by this act shall not become operative if any section of any other
3 act that is enacted by the Legislature during the 2012 calendar year
4 and takes effect on or before January 1, 2013, amends, amends
5 and renumbers, adds, repeals and adds, or repeals any section
6 contained in that article, chapter, part, title, or division.

O

SENATE COMMITTEE ON JUDICIARY
Noreen Evans, Chair

BACKGROUND INFORMATION REQUEST

Please forward the following information to the Committee, Room 2187 in the Capitol, **WITHIN SEVEN (7) CALENDAR DAYS OF RECEIPT** (by e-mail or hand delivery). Use additional pages as necessary and please attach copies of any relevant supplemental or additional background materials. Please call the Committee Assistant at 651-4113 if you have any questions.

Measure: SB 1171

Author: Senator Harman

Staff person to contact (phone number, cell number and email address): Eileen Ricker 916-651-4035 (o), (703) 623-1874 (c), eileen.ricker@sen.ca.gov

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction? Please provide contact information.

Legislative Counsel

Katie Londenberg

Deputy Legislative Counsel

Office of Legislative Counsel

(916) 341-8161

- b. Has a similar bill been introduced in this or any previous legislative session? If so, please identify the bill number and year.
N/A
- c. Has there been an interim committee report or informational hearing on the bill or its subject matter? If so, please identify the report or informational hearing and attach any related information.
N/A

2. Describe in detail existing law on this issue. N/A

3. What does your bill do? Please describe in detail.

SB 1171 makes various technical, nonsubstantive changes in the existing law for the purpose of code maintenance.

The Legislative Counsel is required, by Section 10242 of the Government Code, to advise the Legislature from time to time as to legislation necessary to maintain the codes and legislation necessary to codify those statutes that are enacted subsequent to the enactment of the codes. In compliance with that requirement, every year the Office of Legislative Counsel submits to the Legislature a report on legislation necessary to maintain the codes, which reflects the changes proposed in the annual bill for the "Maintenance of the Codes." The report identifies and recommends nonsubstantive changes in statutes, including technical and grammatical changes. These proposed changes for corrective legislation necessary to maintain the codes may only include proposals for nonsubstantive changes in existing law. Any proposal that would make a substantive change in existing law is not included.

4. What is the problem or deficiency in current law which this bill seeks to remedy? Please describe in detail.

See Question 3

5. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will address the problem. N/A
6. Please identify similar or related federal legislation or statutes and any bills or existing laws you are aware of in other states. N/A
7. Please identify and describe any relevant state and/or federal court decisions. N/A
8. Are the issues addressed by the bill the subject of pending litigation? If yes, please indicate the case citation and include relevant documents.
NO
9. Please identify parties that may have concerns in opposition to the bill, describe those concerns, and state your response to those concerns.
NO
10. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill. Letters received by the author's office after submission of the Background Sheet must be submitted to the Committee as soon as possible, **but no later than 12 p.m. of the Wednesday prior to the scheduled hearing date.**
11. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments. **PLEASE NOTE COMMITTEE POLICY ON AUTHOR'S AMENDMENTS.**
12. Please list the witnesses you plan to have testify.

COMMITTEE POLICY ON AUTHOR'S AMENDMENTS

AUTHOR'S AMENDMENTS MUST BE SUBMITTED IN LEGISLATIVE COUNSEL FORM TO THE COMMITTEE ASSISTANT NO LATER THAN 2:00 P.M. OF THE FRIDAY TWO WEEKS PRIOR TO THE SCHEDULED COMMITTEE HEARING DATE.

IF THIS DEADLINE IS NOT MET BY THE AUTHOR, YOUR BILL WILL BE PUT OVER TO ALLOW THE COMMITTEE MEMBERS AND THE PUBLIC SUFFICIENT TIME TO REVIEW AN ANALYSIS THAT REFLECTS THE AMENDED VERSION OF THE BILL. THE AUTHOR WILL BE RESPONSIBLE FOR OBTAINING ANY NECESSARY RULE WAIVERS TO HEAR THE BILL AT A SUBSEQUENT HEARING. THANK YOU.

PLEASE RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone (916) 651-4113
Fax (916) 445-8390
e-mail to: Roseanne.Moreno@sen.ca.gov

Please send a copy of this completed form and any attachments to the Committee's Republican Policy Consultant, Mike Petersen (651-1501; mike.petersen@sen.ca.gov).

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

SENATE JUDICIARY COMMITTEE
Senator Noreen Evans, Chair
2011-2012 Regular Session

SB 1171 (Harman)
As Introduced
Hearing Date: May 1, 2012
Fiscal: No
Urgency: No
SK

SUBJECT

Maintenance of the Codes

DESCRIPTION

This bill would make numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

BACKGROUND

Every year, the Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing these wholesale corrections. In order to be included in the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change that is identified as having a substantive change is automatically deleted from the bill.

CHANGES TO EXISTING LAW

None

COMMENT

1. Commitment to delete any substantive provision

A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Consequently, any provision that is identified as making a substantive law change has been or will be deleted by the Legislative Counsel's Office.

(more)

2. "All-purpose" yielding clause avoids double jointing problems

Proposed Section 242 on page 583 of the bill provides that any other bill enacted by the Legislature during the 2012 calendar year that takes effect on or before January 1, 2013, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any double jointing problems that might otherwise occur.

Support: None Known

Opposition: None Known

HISTORY

Source: Office of Legislative Counsel

Related Pending Legislation: None Known

Prior Legislation: Annual Maintenance of the Code bills

AMENDED IN ASSEMBLY MAY 21, 2012

SENATE BILL

No. 1171

Introduced by Senator Harman

February 22, 2012

An act to amend Sections 2313, 7068.2, 12241, 19607.5, 19852.2, 19853, 23393.5, and 25503.56 of the Business and Professions Code, to amend Sections 55.3, 1368, and 2983 of the Civil Code, to amend Sections 527.6, 527.8, 527.85, 1287, 1514, and 2024.040 of the Code of Civil Procedure, to amend Sections 500, 2900, 6210, 8210, 12570, and 14301.3 of the Corporations Code, to amend Sections 234.1, 8483.76, 8499.5, 12000, 12001, 41202, 41202.5, 42251, 42605, 48204.1, 49061, 51500, 51501, 54699, 60044, 69508.5, 71091, 72699, 76300, and 89918 of the Education Code, to amend Sections 2196, 3206, and 18106 of, and to repeal Section 2168 of, the Elections Code, to amend and renumber Section 9213 of the Family Code, to amend Section 14101.6 of the Financial Code, to amend Section 8276.5 of the Fish and Game Code, to amend Sections 27551 and 30801 of the Food and Agricultural Code, to amend Sections 1322, 3540.1, 6208.2, 6218.01, 7572, 7582, 8310.7, 12011.5, 12172.5, 14502, 17280.3, 25825.5, 30025, 53395.3.5, 53395.81, 53760.3, 53891, 57077, 57150, 57534, 61105, 65863.10, 65863.11, and 76000.10 of, and to amend and renumber Sections 66499.20¹/₄, 66499.20¹/₂, and 66499.20³/₄ of, the Government Code, to amend Section 1156.6 of the Harbors and Navigation Code, to amend Sections 1367.241, 1374.74, 1527.3, 11357.5, 11364, 25160, 34163, 34167.5, 34173, 34176, 34188.8, 34189, 34194.4, 34195, 100425, 113789, 116565, 121690, 127405, and 136000 of, and to repeal Section 1461 of, the Health and Safety Code, to amend Sections 1760.1, 1763, 1764.1, 1765.1, 1765.2, 1768, 1774, 1775.5, 10123.191, 10144.51, 10192.12, 10509.912, and 11780.5 of the Insurance Code, to amend Sections 226.8 and 1308.10 of the Labor Code, to amend Sections 136.2,

243, 336.5, 429, 597.4, 629.62, 830.5, 1370, 2602, 2932, 3060.7, 3453, 4807, 11105, 11105.03, 11165.7, and 13750 of, and to amend and renumber Sections 21, 22, and 25.5 of, the Penal Code, to amend Sections 4461, 7660, and 13600 of the Probate Code, to amend Section 10490 of the Public Contract Code, to amend Sections 2762, 4214, 4514.5, 4527, 4551.5, 4561, 21092, 21108, 21152, 21167.6.5, and 25747 of the Public Resources Code, to amend Sections 278, 366.2, 381.1, 395.5, 399.11, 399.12, 399.18, 2775.6, 2830, 2851, 2881.1, 2881.2, and 8283 of the Public Utilities Code, to amend Sections 214.02, 3725, 17053.85, 17085, 17282, 19191, 24436.1, 30459.15, and 50156.18 of, to amend the heading of Article 9 (commencing with Section 6850) of Chapter 6 of Part 1 of Division 2 of, and to amend and renumber Section 17131.10 of, the Revenue and Taxation Code, to amend Section 1962.4 of the Streets and Highways Code, to amend Section 679 of, and to repeal Article 2 (commencing with Section 10521) of Chapter 4.5 of Part 1 of Division 3 of, the Unemployment Insurance Code, to amend Sections 11713.3, 12804.11, 23575, and 40240 of the Vehicle Code, to amend Sections 1486, 10753, and 74209 of the Water Code, to amend Sections 319, 366.21, 391, 712, 912, 4512, 4514, 4640.6, 4641.5, 4646.5, 4659.13, 4659.23, 4688.21, 4689, 5720, 8103, 10980, 11451.5, 11461, 11463, 12301.03, 12301.07, 12305.87, 14053.8, 14053.9, 14105.09, 14105.193, 14132.957, 14165, 14165.56, 14165.57, 14166.12, 14166.20, 14168.1, 14168.11, 14169.1, 14182, 14589, 14701, 15657.03, 15910, 15911, 15916, 15926, 17600, and 18220.1 of the Welfare and Institutions Code, to amend Sections 59 and 60 of Chapter 7 of the Statutes of 2011, to amend Sections 9 and 34 of Chapter 136 of the Statutes of 2011, to amend Section 2 of Chapter 211 of the Statutes of 2011, to amend Section 1 of Chapter 404 of the Statutes of 2011, to amend Section 17 of Chapter 13 of the First Extraordinary Session of the Statutes of 2011, and to amend Section 2 of Chapter 14 of the First Extraordinary Session of the Statutes of 2011, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Harman. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

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

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

1 SECTION 1. Section 2313 of the Business and Professions
2 Code is amended to read:
3 2313. The board shall report annually to the Legislature, no
4 later than October 1 of each year, the following information:
5 (a) The total number of temporary restraining orders or interim
6 suspension orders sought by the board to enjoin licensees pursuant
7 to Sections 125.7, 125.8, and 2311, the circumstances in each case
8 that prompted the board to seek that injunctive relief, and whether
9 a restraining order or interim suspension order was actually issued.
10 (b) The total number and types of actions for unprofessional
11 conduct taken by the board against licensees, the number and types
12 of actions taken against licensees for unprofessional conduct related
13 to prescribing drugs, narcotics, or other controlled substances,
14 including those related to the undertreatment or undermedication
15 of pain.
16 (c) Information relative to the performance of the board,
17 including the following: number of consumer calls received;
18 number of consumer calls or letters designated as discipline-related
19 complaints; number of complaint forms received; number of
20 Section 805 and Section 805.01 reports by type; number of Section
21 801.01 and Section 803 reports; coroner reports received; number
22 of convictions reported to the board; number of criminal filings
23 reported to the division; number of complaints and referrals closed,
24 referred out, or resolved without discipline, respectively, prior to
25 accusation; number of accusations filed and final disposition of
26 accusations through the board and court review, respectively; final
27 physician discipline by category; number of citations issued with
28 fines and without fines, and number of public reprimands issued;
29 number of cases in process more than six months from receipt by
30 the board of information concerning the relevant acts to the filing
31 of an accusation; average and median time in processing complaints
32 from original receipt of complaint by the board for all cases at

1 confidential. Public agencies shall use and allow access to these
2 records only for the purposes authorized by this article.

3 (g) For purposes of this article, “local agency” means the City
4 and County of San Francisco.

5 (h) For purposes of this article, “transit-only traffic lane” means
6 any designated transit-only lane on which use is restricted to mass
7 transit vehicles, or other designated vehicles including taxis and
8 vanpools, during posted times.

9 SEC. 184. Section 1486 of the Water Code is amended to read:

10 1486. (a) The Sacramento Regional County Sanitation District,
11 and any successor thereto, with respect to treated wastewater
12 produced by the sanitation district that meets the requirements of
13 the Central Valley Regional Water Quality Control Board, as may
14 be amended or modified, and that is discharged into the Sacramento
15 River, may file an application for a permit to appropriate an amount
16 of water up to the amount of treated wastewater that is discharged
17 into the Sacramento River, less diminution by seepage, evaporation,
18 transportation, or other natural causes between the point of
19 discharge from its wastewater treatment plant and the point of
20 diversion out of the Sacramento River or the Sacramento-San
21 Joaquin Delta.

22 (b) Upon application for a permit to appropriate water pursuant
23 to subdivision (a), the board may grant the permit subject to the
24 terms and conditions as in the board’s judgment are necessary for
25 the protection of the rights of any legal user of the water.

26 (c) Prior to the board granting a permit under subdivision (b),
27 the board shall comply with the provisions of this part, and other
28 applicable law, and may impose terms and conditions authorized
29 thereunder.

30 (d) Water appropriated in accordance with this section may be
31 sold or utilized for any beneficial purpose.

32 SEC. 185. Section 10753 of the Water Code is amended to
33 read:

34 10753. (a) Any local agency, whose service area includes a
35 groundwater basin, or a portion of a groundwater basin, that is not
36 subject to groundwater management pursuant to other provisions
37 of law or a court order, judgment, or decree, may, by ordinance,
38 or by resolution if the local agency is not authorized to act by
39 ordinance, adopt and implement a groundwater management plan
40 pursuant to this part within all or a portion of its service area.

1 (b) The provision of durable medical equipment traditionally
2 has been a function of public and private health insurance
3 programs.

4 (c) It is the intent of the Legislature that public and private health
5 insurance programs continue to be the provider of first resort for
6 speech-generating devices that are classified as durable medical
7 equipment and that the Public Utilities Commission only provide
8 access to those devices when funding from traditional public and
9 private health insurance policies and programs is unavailable.

10 SEC. 240. Section 17 of Chapter 13 of the Statutes of 2011,
11 First Extraordinary Session, is amended to read:

12 SEC. 17. There is hereby appropriated one thousand dollars
13 (\$1,000) from the General Fund to the California Emergency
14 Management Agency for program administrative costs incurred
15 in connection with Section 13821 of the Penal Code.

16 SEC. 241. Section 2 of Chapter 14 of the Statutes of 2011,
17 First Extraordinary Session, is amended to read:

18 SEC. 2. There is hereby appropriated one thousand dollars
19 (\$1,000) from the General Fund to the California Emergency
20 Management Agency for program administrative costs incurred
21 in connection with Section-~~of~~ 13821 of the Penal Code.

22 SEC. 242. Any section of any act enacted by the Legislature
23 during the 2012 calendar year that takes effect on or before January
24 1, 2013, and that amends, amends and renumbers, adds, repeals
25 and adds, or repeals a section that is amended, amended and
26 renumbered, added, repealed and added, or repealed by this act,
27 shall prevail over this act, whether that act is enacted prior to, or
28 subsequent to, the enactment of this act. The repeal, or repeal and
29 addition, of any article, chapter, part, title, or division of any code
30 by this act shall not become operative if any section of any other
31 act that is enacted by the Legislature during the 2012 calendar year
32 and takes effect on or before January 1, 2013, amends, amends
33 and renumbers, adds, repeals and adds, or repeals any section
34 contained in that article, chapter, part, title, or division.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

SHORT FORM ANALYSIS

Author: Harman Analyst: Jahna Carlson Bill Number: SB 1171
 Related Bills: None Telephone: 845-5683 Amended Date: May 21, 2012
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Code Maintenance

- Major Amendment Minor/Technical Amendment
 Recommended Approved Position of _____ still valid.

SUMMARY

This bill would make numerous technical, non-substantive changes as a matter of code maintenance to various California codes, including to the Revenue and Taxation Code (R&TC).

ANALYSIS

Minor/Technical Amendment

The May 21, 2012, amendments made non-substantive, technical changes. The amendments would not impact the department's programs, operations, or state income tax revenue. The department's analysis of the bill as introduced February 22, 2012, still applies.

LEGISLATIVE STAFF CONTACT

Jahna Carlson
 Legislative Analyst, FTB
 (916) 845-5683
jahna.carlson@ftb.ca.gov

Gail Hall
 Legislative Director, FTB
 (916) 845-6333
gail.hall@ftb.ca.gov

Board Position:

_____ S _____ NA X NP
 _____ SA _____ O _____ NAR
 _____ N _____ OUA

Legislative Director

Date

Gail Hall

06/05/12

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

SB 1171 (HARMAN, T)
MAINTENANCE OF THE CODE.

Version: 05/21/12 Last Amended
Vote: Majority
Support

Vice-Chair: Donald Wagner
Tax or Fee Increase: No

Makes technical changes to remove errors in grammar and remove ambiguities without making substantive changes in the state codes.

Policy Question

Should technical changes in grammar be made in the various state codes?

Summary

This bill makes technical changes in grammar in the various state codes.

Support

Legislative Counsel.

Opposition

None on file.

Arguments In Support of the Bill

This bill makes technical changes to remove grammatical errors in the various state codes. The

Policy Consultant: Mark Redmond 6/11/2012
Fiscal Consultant:

bill removes ambiguities, but with no intention to make any substantive changes in the law.

Arguments In Opposition to the Bill

No argument raised in opposition.

Fiscal Effect

Unknown.

Comments

The Legislative Counsel (Counsel) annually reviews the state codes in order to correct errors in grammar and punctuation. This is put forward as one of the Counsel's annual "maintenance of the codes" bills.

Senate Republican Floor Votes (37-0) 5/10/2012

Ayes: All Republicans, except

Noes: None

Abs./NV: Cannella, Runner, Wyland

Assembly Republican Judiciary Votes (0-0) 6/26/12

Ayes: None

Noes: None

Abs./NV: None

Assembly Republican Votes (0-0) 1/1/11

Ayes: None

Noes: None

Abs./NV: None

Assembly Republican Votes (0-0) 1/1/11

Ayes: None

Noes: None

Abs./NV: None

ASSEMBLY JUDICIARY COMMITTEE **MANDATORY INFORMATION WORKSHEET**

*******IMPORTANT NOTE*******

THIS FORM MUST BE FULLY COMPLETED AND HAND-DELIVERED TO THE COMMITTEE NO LATER THAN SEVEN (7) CALENDAR DAYS AFTER IT IS INITIALLY DELIVERED TO THE AUTHOR'S OFFICE. IF THE BILL HAS BEEN SET FOR HEARING, IT SHALL CONSTITUTE AN AUTHOR'S RESET IF A SATISFACTORY WORKSHEET OR OTHER REQUESTED INFORMATION HAS NOT BEEN TIMELY RECEIVED BY THE COMMITTEE.

ALL SUBSTANTIVE AUTHOR'S AMENDMENTS MUST BE HAND-DELIVERED TO THE COMMITTEE IN LEGISLATIVE COUNSEL FORM (ORIGINAL AND EIGHT COPIES) WITHIN SEVEN (7) CALENDAR DAYS PRIOR TO THE HEARING. FAILURE TO DO SO MAY RESULT IN AN AUTHOR'S RESET.

THE COMMITTEE RECORDS THE DATE THIS WORKSHEET IS DELIVERED, THE DATE IT IS RETURNED, AND THE DATE THE COMMITTEE RECEIVES AMENDMENTS.

PLEASE RETURN COMPLETED WORKSHEETS TO THE COMMITTEE BY EMAIL TO SABA.HASHMAT@ASM.CA.GOV. PLEASE ALSO HAND-DELIVER TWO (2) COPIES OF THIS WORKSHEET AND ANY SUPPORTING DOCUMENTS TO THE COMMITTEE.

ASSEMBLY JUDICIARY COMMITTEE, 1020 N Street (LOB), Room 104

Bill Number: SB 1171 Author: Harman (for Senate Judiciary)

Author's staff person: Eileen Ricker phone: 651-4035 e-mail: eileen.ricker@sen.ca.gov

1. What do you see as the key issue(s) raised by the bill.

Judiciary Code Cleanup per Legislative Counsel

2. Please provide a statement of the author's purpose for the bill, which may be used in the Committee's analysis, including *in detail* the problem or deficiency in the current law that the bill seeks to remedy, and how the bill resolves the problem.

SB 1171 makes various technical, nonsubstantive changes in the existing law for the purpose of code maintenance.

The Legislative Counsel is required, by Section 10242 of the Government Code, to advise the Legislature from time to time as to legislation necessary to maintain the codes and legislation necessary to codify those statutes that are enacted subsequent to the enactment of the codes. In compliance with that

requirement, every year the Office of Legislative Counsel submits to the Legislature a report on legislation necessary to maintain the codes, which reflects the changes proposed in the annual bill for the "Maintenance of the Codes." The report identifies and recommends nonsubstantive changes in statutes, including technical and grammatical changes. These proposed changes for corrective legislation necessary to maintain the codes may only include proposals for nonsubstantive changes in existing law. Any proposal that would make a substantive change in existing law is not included.

3. Who is the sponsor of the bill? If there is no sponsor, what person or entity requested that the bill be introduced? Please provide the name and telephone number of any sponsor or other person who may be contacted by the Committee for information regarding the bill.

Legislative Counsel

Contact: Katie Londenberg
Deputy Legislative Counsel
Office of Legislative Counsel
(916) 341-8161

4. Please show the results of an LIS search regarding each similar and/or related bill (for example, same key words and/or code section) that has been introduced in this legislative session, or in any prior legislative session covered by the LIS system. (When using the Text Search function in LIS, be sure to check the "All Bill Versions" button in the Include column.) Please include the bill number and year, a summary of the bill's contents, and the disposition of each bill.

No similar or related bills in this legislative session.

5. Please identify and summarize all similar or related pending federal legislation (see <http://thomas.loc.gov/home/thomas2.html>) and any bills or existing laws you are aware of in other states.

None

7. Are the issues addressed by the bill the subject of pending litigation? If yes, please indicate the status of the pending litigation and how the bill would affect the pending litigation. Please also provide the case citation and any relevant documents.

No

8. Have there been any informational hearings on the subject matter of the bill? If so, when? Please attach all information distributed by the Committee that held the hearing.

No informational hearings on this bill.

9. Please describe all amendments the author currently wishes to make before this bill is heard in Committee. (Please recall that amendments must be hand-delivered to the Committee in Leg Counsel form at least 7 calendar days before the bill is to be heard.)

Technical, non-substantive generated by Enrolling and Engrossing

10. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will properly address the problem. Please also attach copies of all such evidence and/or state where such material is available for reference by Committee counsel.

N/A

11. Please list all groups, agencies or persons that have contacted you in support or in opposition to the bill. Please attach copies of all letters of support and opposition.

None on file

12. Please describe any concerns that you anticipate may be raised in opposition to your bill, and state your response to those concerns.

None

13. Please list the name, organization and telephone number of all witnesses that you anticipate will testify in support or opposition to the bill. (Please note that the time restraints may require the Committee to limit the number of testifying witnesses. Additional witnesses may identify themselves for the record.)

**PLEASE REMEMBER TO EMAIL THIS COMPLETED WORKSHEET,
AND ALSO DROP OFF 2 HARD COPIES TO THE COMMITTEE.
TYPE AS DETAILED RESPONSES AS POSSIBLE. THANK YOU
VERY MUCH FOR YOUR ASSISTANCE.**

Date of Hearing: June 26, 2012

ASSEMBLY COMMITTEE ON JUDICIARY
Mike Feuer, Chair
SB 1171 (Harman) – As Amended: May 21, 2012

PROPOSED CONSENT

SENATE VOTE: 37-0

SUBJECT: MAINTENANCE OF THE CODES

KEY ISSUE: SHOULD VARIOUS NON-SUBSTANTIVE, TECHNICAL CHANGES BE MADE VIA THE "MAINTENANCE OF THE CODES" BILL SPONSORED BY THE LEGISLATIVE COUNSEL'S OFFICE IN THIS ANNUAL TECHNICAL CLEAN-UP BILL?

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

SYNOPSIS

This non-controversial bill makes numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

SUMMARY: Makes non-substantive changes to the codes by recommendation of the Legislative Counsel's office. Specifically, this bill makes various grammatical and other technical changes suggested by the Office of Legislative Counsel in order to correct non-substantive errors that exist in the original bill text.

EXISTING LAW: Unaffected

COMMENTS: Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Drew Liebert / JUD. / (916) 319-2334

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK

UNFINISHED BUSINESS

Bill No: SB 1171
Author: Harman (R)
Amended: 5/21/12
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 5/1/12
AYES: Evans, Harman, Blakeslee, Corbett, Leno

SENATE FLOOR: 37-0, 5/10/12 (Consent)
AYES: Alquist, Anderson, Berryhill, Blakeslee, Calderon, Corbett, Correa,
De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines,
Hancock, Harman, Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu,
Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian,
Steinberg, Strickland, Vargas, Walters, Wolk, Wright, Yee
NO VOTE RECORDED: Cannella, Runner, Wyland

ASSEMBLY FLOOR: 80-0, 7/2/12 (Consent) - See last page for vote

SUBJECT: Maintenance of the codes

SOURCE: Office of Legislative Counsel

DIGEST: This bill makes numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

Assembly Amendments add additional technical changes to the codes.

ANALYSIS: Every year, the Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the

CONTINUED

Codes” bill is the vehicle for implementing these wholesale corrections. In order to be included in the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change that is identified as having a substantive change is automatically deleted from the bill.

A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Consequently, any provision that is identified as making a substantive law change has been or will be deleted by the Legislative Counsel’s Office.

Proposed Section 242 on page 583 of the bill provides that any other bill enacted by the Legislature during the 2012 calendar year that takes effect on or before January 1, 2013, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over the provisions of this bill. This “all-purpose” yielding clause avoids any double jointing problems that might otherwise occur.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/2/12)

Office of Legislative Counsel (source)

ASSEMBLY FLOOR: 80-0, 07/02/12

AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Conway, Cook, Davis, Dickinson, Donnelly, Eng, Feuer, Fletcher, Fong, Fuentes, Furutani, Beth Gaines, Galgiani, Garrick, Gatto, Gordon, Gorell, Grove, Hagman, Halderman, Hall, Harkey, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Knight, Lara, Logue, Bonnie Lowenthal, Ma, Mansoor, Mendoza, Miller, Mitchell, Monning, Morrell, Nestande, Nielsen, Norby, Olsen, Pañ, Perea, V. Manuel Pérez, Portantino, Silva, Skinner, Smyth, Solorio, Swanson, Torres, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez

RJG:n 7/3/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

Senate Bill No. 1171

CHAPTER 162

An act to amend Sections 2313, 7068.2, 12241, 19607.5, 19852.2, 19853, 23393.5, and 25503.56 of the Business and Professions Code, to amend Sections 55.3, 1368, and 2983 of the Civil Code, to amend Sections 527.6, 527.8, 527.85, 1287, 1514, and 2024.040 of the Code of Civil Procedure, to amend Sections 500, 2900, 6210, 8210, 12570, and 14301.3 of the Corporations Code, to amend Sections 234.1, 8483.76, 8499.5, 12000, 12001, 41202, 41202.5, 42251, 42605, 48204.1, 49061, 51500, 51501, 54699, 60044, 69508.5, 71091, 72699, 76300, and 89918 of the Education Code, to amend Sections 2196, 3206, and 18106 of, and to repeal Section 2168 of, the Elections Code, to amend and renumber Section 9213 of the Family Code, to amend Section 14101.6 of the Financial Code, to amend Section 8276.5 of the Fish and Game Code, to amend Sections 27551 and 30801 of the Food and Agricultural Code, to amend Sections 1322, 3540.1, 6208.2, 6218.01, 7572, 7582, 8310.7, 12011.5, 12172.5, 14502, 17280.3, 25825.5, 30025, 53395.3.5, 53395.81, 53760.3, 53891, 57077, 57150, 57534, 61105, 65863.10, 65863.11, and 76000.10 of, and to amend and renumber Sections 66499.20¹/₄, 66499.20¹/₂, and 66499.20³/₄ of, the Government Code, to amend Section 1156.6 of the Harbors and Navigation Code, to amend Sections 1367.241, 1374.74, 1527.3, 11357.5, 11364, 25160, 34163, 34167.5, 34173, 34176, 34188.8, 34189, 34194.4, 34195, 100425, 113789, 116565, 121690, 127405, and 136000 of, and to repeal Section 1461 of, the Health and Safety Code, to amend Sections 1760.1, 1763, 1764.1, 1765.1, 1765.2, 1768, 1774, 1775.5, 10123.191, 10144.51, 10192.12, 10509.912, and 11780.5 of the Insurance Code, to amend Sections 226.8 and 1308.10 of the Labor Code, to amend Sections 136.2, 243, 336.5, 429, 597.4, 629.62, 830.5, 1370, 2602, 2932, 3060.7, 3453, 4807, 11105, 11105.03, 11165.7, and 13750 of, and to amend and renumber Sections 21, 22, and 25.5 of, the Penal Code, to amend Sections 4461, 7660, and 13600 of the Probate Code, to amend Section 10490 of the Public Contract Code, to amend Sections 2762, 4214, 4514.5, 4527, 4551.5, 4561, 21092, 21108, 21152, 21167.6.5, and 25747 of the Public Resources Code, to amend Sections 278, 366.2, 381.1, 395.5, 399.11, 399.12, 399.18, 2775.6, 2830, 2851, 2881.1, 2881.2, and 8283 of the Public Utilities Code, to amend Sections 214.02, 3725, 17053.85, 17085, 17282, 19191, 24436.1, 30459.15, and 50156.18 of, to amend the heading of Article 9 (commencing with Section 6850) of Chapter 6 of Part 1 of Division 2 of, and to amend and renumber Section 17131.10 of, the Revenue and Taxation Code, to amend Section 1962.4 of the Streets and Highways Code, to amend Section 679 of, and to repeal Article 2 (commencing with Section 10521) of Chapter 4.5 of Part 1 of Division 3 of, the Unemployment Insurance Code, to amend Sections 11713.3, 12804.11, 23575, and 40240 of the Vehicle Code, to amend Sections 1486, 10753, and 74209 of the Water Code, to amend Sections 319, 366.21, 391,

712, 912, 4512, 4514, 4640.6, 4641.5, 4646.5, 4659.13, 4659.23, 4688.21, 4689, 5720, 8103, 10980, 11451.5, 11461, 11463, 12301.03, 12301.07, 12305.87, 14053.8, 14053.9, 14105.09, 14105.193, 14132.957, 14165, 14165.56, 14165.57, 14166.12, 14166.20, 14168.1, 14168.11, 14169.1, 14182, 14589, 14701, 15657.03, 15910, 15911, 15916, 15926, 17600, and 18220.1 of the Welfare and Institutions Code, to amend Sections 59 and 60 of Chapter 7 of the Statutes of 2011, to amend Sections 9 and 34 of Chapter 136 of the Statutes of 2011, to amend Section 2 of Chapter 211 of the Statutes of 2011, to amend Section 1 of Chapter 404 of the Statutes of 2011, to amend Section 17 of Chapter 13 of the First Extraordinary Session of the Statutes of 2011, and to amend Section 2 of Chapter 14 of the First Extraordinary Session of the Statutes of 2011, relating to the maintenance of the codes.

[Approved by Governor July 23, 2012. Filed with
Secretary of State July 23, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, Harman. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

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

SECTION 1. Section 2313 of the Business and Professions Code is amended to read:

2313. The board shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board to enjoin licensees pursuant to Sections 125.7, 125.8, and 2311, the circumstances in each case that prompted the board to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the board, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of complaint forms received; number of Section 805 and Section 805.01 reports by type;

(h) For purposes of this article, “transit-only traffic lane” means any designated transit-only lane on which use is restricted to mass transit vehicles, or other designated vehicles including taxis and vanpools, during posted times.

SEC. 184. Section 1486 of the Water Code is amended to read:

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.

SEC. 185. Section 10753 of the Water Code is amended to read:

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.

the Penal Code, and (3) Assembly Bill 109 becomes operative, in which case Section 803 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of Assembly Bill 109, at which time Section 1.5 of this bill shall become operative.

SEC. 239. Section 1 of Chapter 404 of the Statutes of 2011 is amended to read:

Section 1. The Legislature finds and declares all of the following:

(a) Certain speech-generating devices are classified by the United States Department of Health and Human Services guidelines as durable medical equipment.

(b) The provision of durable medical equipment traditionally has been a function of public and private health insurance programs.

(c) It is the intent of the Legislature that public and private health insurance programs continue to be the provider of first resort for speech-generating devices that are classified as durable medical equipment and that the Public Utilities Commission only provide access to those devices when funding from traditional public and private health insurance policies and programs is unavailable.

SEC. 240. Section 17 of Chapter 13 of the Statutes of 2011, First Extraordinary Session, is amended to read:

Sec. 17. There is hereby appropriated one thousand dollars (\$1,000) from the General Fund to the California Emergency Management Agency for program administrative costs incurred in connection with Section 13821 of the Penal Code.

SEC. 241. Section 2 of Chapter 14 of the Statutes of 2011, First Extraordinary Session, is amended to read:

Sec. 2. There is hereby appropriated one thousand dollars (\$1,000) from the General Fund to the California Emergency Management Agency for program administrative costs incurred in connection with Section 13821 of the Penal Code.

SEC. 242. Any section of any act enacted by the Legislature during the 2012 calendar year that takes effect on or before January 1, 2013, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2012 calendar year and takes effect on or before January 1, 2013, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

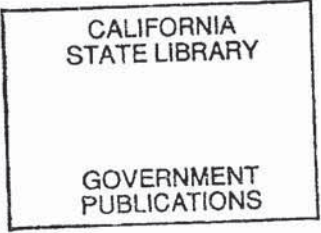
L450
.C6
52nd
2012



Office of Legislative Counsel

Fifty-second Report on

LEGISLATION NECESSARY TO MAINTAIN THE CODES



November 9, 2012

Diane F. Boyer-Vine
Legislative Counsel

L450.C6
2012

LEGISLATIVE COUNSEL
Diane F. Boyer-Vine



A TRADITION OF TRUSTED LEGAL SERVICE
TO THE CALIFORNIA LEGISLATURE

CHIEF DEPUTY
Jeffrey A. DeLand

PRINCIPAL DEPUTIES
Joe Ayala
Cindy Merten Cardullo
Thomas J. Kerbs
Kirk S. Louie

Baldev S. Heir
Michael R. Kelly
Romulo L. Lopez
Fred A. Messerer
William E. Moddelmog
Lara Bierman Nelson
Gerardo Partida
Robert A. Pratt
Patricia Gates Rhodes
Janice L. Thurston

DEPUTIES
Jennifer Klein Baldwin
Jennifer M. Barry
Vanessa S. Bedford
Catherine Bidart
Ann M. Burastero
Daniel J. R. Calvert
Noel A. Calvillo
Sergio E. Carpio
William Chan
Elaine Chu
Byron D. Damiani, Jr.
Stephen G. Dehrer
Eric D. Dye
Sharon L. Everett
Krista M. Ferns
Lisa C. Goldkuhl
Mari C. Guzman
Amy Jean Haydt
Jacob D. Heninger
Stephanie Elaine Hoehn
Russell H. Holder
Cara L. Jenkins
C. David Johnson, Jr.
Valerie R. Jones
Lori Ann Joseph
Aliza R. Kaliski
Christina M. Kenzie
Michael J. Kerins
Eunie Kim
Eve B. Krotzinger
L. Erik Lange
Felicia A. Lee
Jason K. Lee
Kathryn W. Londenberg
Mariana Marin
Anthony P. Marquez
Christine P. Maruccia
Sheila R. Mohan
Natalie R. Moore
Kendra A. Nielsen
Yooli Choi O'Brien
Sue-Ann Peterson
Lisa M. Plummer
Cameron Rhudy
Robert D. Roth
Michelle L. Samore
Amy E. Schweitzer
Melissa M. Scolari
Stephanie Lynn Shirkey
Aaron D. Silva
Jessica L. Steele
Mark Franklin Terry
Josh Tosney
Daniel Vandekoolwyk
Marta R. Vanegas
Joanna E. Varner
Joyce L. Wallach
Bradley N. Webb
Rachelle M. Weed
Genevieve Wong
Armin G. Yazdi
Jenny C. Yun
Jack Zorman

LEGISLATIVE
COUNSEL
BUREAU

LEGISLATIVE COUNSEL BUREAU
925 L STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 341-8000
FACSIMILE (916) 341-8020
INTERNET WWW.LEGISLATIVECOUNSEL.CA.GOV

November 9, 2012

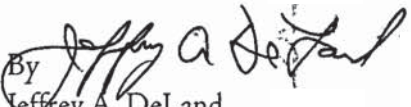
California State Library GPS
Library/Courts Bldg.
P.O. Box 942837
Sacramento, CA 94237-0001

LEGISLATION NECESSARY TO MAINTAIN THE CODES

Enclosed herewith are the Fifty-first and Fifty-second Reports on Legislation Necessary to Maintain the Codes. These reports are submitted to the Legislature in compliance with Section 10242 of the Government Code.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By 
Jeffrey A. DeLand
Chief Deputy

JAD:clr

Enclosure

FIFTY-SECOND REPORT ON LEGISLATION NECESSARY TO MAINTAIN THE CODES

INTRODUCTION

The Legislative Counsel is required, by Section 10242 of the Government Code, to advise the Legislature from time to time as to legislation necessary to maintain the codes and legislation necessary to codify those statutes that are enacted subsequent to the enactment of the codes. This report is submitted to the Legislature in compliance with that requirement.

The present report includes recommendations only for nonsubstantive changes in the statutes, and continues without change the policies first stated in the March 1, 1954, Report on Legislation Necessary to Maintain the Codes.

This report reflects the changes proposed in Senate Bill No. 1171 of the 2011-12 Regular Session.

PART I

ACTS RECOMMENDED FOR CODIFICATION IN 2012

Since the publication in 2012 of the Fifty-First Report, no statutes have been proposed for codification.

PART II

CORRECTIVE LEGISLATION TO MAINTAIN THE CODES

Recommendations for Correction in 2012

The suggestions for corrective legislation necessary to maintain the codes in 2012 are set forth in the appendix to this report. These suggestions represent an accumulation of matters that have come to the attention of the Office of Legislative Counsel since the Fifty-First Report, through correspondence and the suggestions of public officials and members of the public.

Further, with regard to any code provision that is a subject of this report, any reference to any individual, or class of individuals, by sex, or by any term that ordinarily refers only to one sex, has been revised to refer to both sexes or to a neutral class, except where the context of the provision otherwise requires.

In any code provision that is a subject of this report, the word “said” or “such,” when it is used as a grammatical article in place of “the,” “those,” or any other term appropriately used in that context, has been deleted and replaced with a more appropriate word or phrase, to conform to code style. Furthermore, the phrase “the provisions of,” when referring to an entire code or an otherwise designated body of law (for example, “pursuant to the provisions of the Civil Code” or “under the provisions of this chapter”), has been deleted to conform to code style.

No substantive change is involved in the proposed recommendations for correction in 2012.

Summary of Action on Prior Recommendations for Corrective Legislation

Assembly Bill No. 1023 was introduced in 2011 at the 2011-12 Regular Session for the correction of those errors in the codes listed in the appendix of the Fifty-first Report on Legislation Necessary to Maintain the Codes. The bill was enacted as Chapter 296 of the Statutes of 2011.

CONCLUSION

The Legislative Counsel recommends to the Legislature that the subject of this report be referred to the appropriate committees of the Senate and the Assembly for the purpose of ascertaining the propriety of the correction or repeal of those statutes listed in the appendix of this report, and of holding any hearings thereon that may appear desirable to those committees.

Appendix

CORRECTIVE LEGISLATION NECESSARY
TO MAINTAIN THE CODES

CORRECTIVE LEGISLATION NECESSARY TO MAINTAIN THE CODES

BUSINESS AND PROFESSIONS CODE

- § 2313 *(Item 12-1)* In this section, changes should be made to correct an error in punctuation and to conform to code style.
- § 7068.2 *(Item 12-2)* In this section, changes should be made to correct errors in punctuation and grammar.
- § 12241 *(Item 12-3)* In this section, a change should be made to correct an error in diction.
- § 19607.5 *(Item 12-4)* In this section, changes should be made to conform to code style.
- § 19852.2 *(Item 12-5)* In this section, the reference in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) to “subdivision (s) of Section 19805” should be changed to “subdivision (w) of Section 19805)” to correct an incorrect cross-reference. In addition, changes should be made to conform to code style.
- § 19853 *(Item 12-6)* In this section, the reference in subdivision (a) to “subdivision (i) of Section 19805” should be changed to “subdivision (j) of Section 19805” to correct an incorrect reference.
- § 23393.5 *(Item 12-7)* In this section, changes should be made to correct errors in grammar.
- § 25503.56 *(Item 12-8)* In this section, changes should be made to correct errors in grammar and punctuation.

WATER CODE

- § 1486 *(Item 12-184)* In this section, changes should be made to conform to code style.
- § 10753 *(Item 12-185)* In this section, the reference in subdivision (c) to a “local agency with authority” should be changed to a “local agency” to correct an incorrect reference.
- § 74209 *(Item 12-186)* In this section, a change should be made to correct a descriptive error.

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

THIS PAGE INTENTIONALLY LEFT

BLANK