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2009–10 SEVENTH EXTRAORDINARY SESSION  
AMENDMENTS TO ASSEMBLY BILL NO. 11

Amendment 1

Strike out line 1 of the title and insert:

An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1228.5, 1228.7, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 2525, 2526, 2550, 2763.5, and 5106 of, and to add Sections 1051.1, 1240.5, 1826, 1846, and 1847 to, the Water Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Items 3940-001-0439 and 3940-001-3058 of Section 2.00 of the Budget Act of 2009, relating to water resources, and making an appropriation therefor.

## Amendment 2

On page 1, before line 1, insert:

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

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

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

6103.4. Section 6103 does not apply to any fee or charge for official services required by Section 100860 of the Health and Safety Code, ~~or Part 5 (commencing with Section 4999) of Division 2, or Division 7 (commencing with Section 13000), of the Water Code.~~

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

1051.1. (a) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may order any person or entity that diverts or uses water to prepare and submit to the board any technical or monitoring program reports related to that person's or entity's diversion or use of water as the board may specify. The costs incurred by the person or entity in the preparation of those reports shall bear a reasonable

relationship to the need for the report and the benefit to be obtained from the report. If the preparation of individual reports would result in a duplication of effort, or if the reports are necessary to evaluate the cumulative effect of several diversions or uses of water, the board may order any person or entity subject to this subdivision to pay a reasonable share of the cost of preparing reports.

(b) Any order issued under this section shall be served by personal service or registered mail on the party required to submit technical or monitoring program reports or to pay a share of the costs of preparing reports. Unless the board issues the order after a hearing, the order shall inform the party of the right to request a hearing within 30 days after the party has been served. If the party does not request a hearing within that 30-day period, the order shall take effect as issued. If the party requests a hearing within that 30-day period, the board may adopt a decision and order after conducting a hearing.

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

(d) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may inspect the facilities of any person or entity to ascertain whether the purposes of Section 100 and this division are being met and to ascertain compliance with any permit, license, certification, registration, decision, order, or regulation issued under Section 275, this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7. The board shall adopt regulations for procedures pursuant to Article

13 (commencing with Section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, and any time extensions necessary to implement those regulations. Except in the event of an emergency affecting the public health or safety, the inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.

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

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

~~(b) Civil liability may be administratively imposed by the board pursuant to Section 1055 for a trespass as defined in this section in an amount not to exceed five hundred dollars (\$500) for each day in which the trespass occurs.~~

~~(c)~~

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

~~(d)~~

~~(c) (1)~~ Any person or entity committing a trespass as defined in this section may be liable ~~for a sum in an amount~~ in an amount not to exceed ~~five hundred dollars (\$500) for each day in which the trespass occurs.~~ The the greater of either of the following amounts:

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

(B) The highest market value of the water subject to the trespass.

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

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

(e)

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

(2) Any funds recovered pursuant to this section that exceed the amounts that were authorized before the effective date of the amendments made to this section by Assembly Bill 11 of the 2009–10 Seventh Extraordinary Session of the Legislature shall be deposited in the Water Rights Protection Subaccount in the Water Rights Fund established pursuant to Section 1550.

(f)

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

(f) The increase in the amount of penalties that may be imposed pursuant to the amendments made to this section during the 2009–10 Seventh Extraordinary Session of the Legislature does not apply to violations that occurred prior to the effective date of those amendments.

SEC. 5. 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, Section 1536, Section 1845, Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2, or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, 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 the board, or a member of the board ~~as it may specify in accordance with Section 183.~~

~~(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.~~

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

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

SEC. 6. 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, Section 1536, or Section 1845, or 1846~~ for the same act or failure to act.

SEC. 7. Section 1055.3 of the Water Code is amended to read:

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

SEC. 8. Section 1120 of the Water Code is amended to read:

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

SEC. 9. Section 1228.5 of the Water Code is amended to read:

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

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

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

(d) Failure to renew registration in substantial compliance with the reporting requirements prescribed by the board within the time period specified in subdivision (a), or to pay the renewal fee specified in subdivision (b) of Section ~~1228.8~~ 1525, shall result by operation of law in the revocation of any right acquired pursuant to this article.

SEC. 10. Section 1228.7 of the Water Code is amended to read:

1228.7. (a) Any registrant may change the point of diversion or place of use by delivering to the board an amended registration form in accordance with Section 1228.3, including payment of the registration fee specified in ~~subdivision (a) of Section 1228.8~~ Section 1525, except that the purpose of the use may not be changed and the change may not operate to the injury of any legal user of the water involved.

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

(c) All provisions of this article regarding appropriations made pursuant thereto, including, but not limited to, provisions regarding enforcement, are applicable to the

appropriation as described in the completed amended registration, except that the conditions established by the board pursuant to Section 1228.6 which are in effect at the time of completion of the amended registration shall supersede the conditions which were applicable to the original completed registration.

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

1240.5. In any proceeding before the board in which it is alleged that a right to appropriate water has ceased or is subject to forfeiture or revocation for nonuse, there shall be a rebuttable presumption that no use occurred unless that use is included in a statement submitted pursuant to any reporting or monitoring requirement established under any permit, license, certificate, registration, decision or order, or regulation issued by the board pursuant to this division, Section 275, Article 7 (commencing with Section 13550) of Division 7, or the public trust doctrine under this part, and the statement is submitted within six months after it is required to be filed with the board. This section does not apply to any diversion or use that occurred before January 1, 2009.

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

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

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

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

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

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

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

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

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

~~(6)~~

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

~~(7)~~

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

~~(8)~~

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

~~(9)~~

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

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

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

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

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the

type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 17. 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, and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, and to enforce reporting and monitoring requirements.

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

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

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

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

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable for a sum in an amount not to exceed ~~one thousand dollars~~ (\$1,000) for each day in which the violation occurs. the greater of either of the following amounts:

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

(B) The highest market value of the water.

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

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

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not

limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

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

(2) Any funds recovered pursuant to this section that exceed the amounts that were authorized before the effective date of the amendments made to this section by Assembly Bill 11 of the 2009–10 Seventh Extraordinary Session of the Legislature shall be deposited in the Water Rights Protection Subaccount in the Water Rights Funds established pursuant to Section 1550.

(e) The increase in the amount of penalties that may be imposed pursuant to the amendments made to this section during the 2009–10 Seventh Extraordinary Session of the Legislature does not apply to violations that occurred prior to the effective date of those amendments.

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

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

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

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

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

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

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

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

(3) This section does not provide a basis for imposing liability on a watermaster who is subject to reporting or monitoring requirements but does not divert or use the water subject to those requirements.

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

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

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

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

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

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

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

SEC. 22. Section 2525 of the Water Code is amended to read:

2525. Upon petition signed by one or more claimants to water of any stream system, requesting the determination of the rights of the various claimants to the water of that stream system, the board shall, if, upon investigation, it finds the facts and conditions are such that the public interest and necessity will be served by a determination of the water rights involved, enter an order granting the petition and make proper arrangements to proceed with the determination. The board may initiate a determination of rights under its own motion if after a hearing it finds, based on substantial evidence, that the public interest and necessity will be served by a determination of the rights involved.

SEC. 23. Section 2526 of the Water Code is amended to read:

2526. As soon as practicable after granting the petition or motion the board shall prepare and issue a notice setting forth the following:

(a) The facts of the entry of the order and of the pendency of the ~~proceedings;~~ proceedings.

(b) That all claimants to rights to the use of water of the stream system are required to inform the board within 60 days from the date of the notice, or such further time as the board may allow, of their intention to file proof of ~~claim;~~ claim.

(c) The date prior to which all claimants to rights to the water of the stream system shall notify the board in writing of their intention to file proof of claim and the

address to which all subsequent notices to the claimant relating to the proceedings may ~~be sent~~, sent.

(d) A statement that all claimants will be required to make proof of their claims at a time to be fixed by the board after the conclusion of its investigation.

SEC. 24. Section 2550 of the Water Code is amended to read:

2550. As soon as practicable after granting the petition or motion, the board shall begin an investigation of the stream system, of the diversion of water, of all beneficial uses being made of the water, and of the water supply available for those uses, and shall gather such other data and information as may be essential to the proper determination of the water rights in the stream system.

SEC. 25. Section 2763.5 of the Water Code is amended to read:

2763.5. (a) No exception to the order of determination shall be considered, except in the court's discretion for good cause shown, unless the matter of the exception was presented to the board in the form of an objection. Good cause includes, but is not limited to, the existence of newly discovered relevant evidence which, in the exercise of reasonable diligence, could not have been presented to the board during the board's proceedings.

(b) This section does not apply to persons to whom the board did not mail either (1) written notice of the board meeting at which the petition or motion pursuant to Section 2525 is to be considered as an item of business, or (2) written notice of the pendency of the proceedings pursuant to Section 2526.

SEC. 26. Section 5106 of the Water Code is amended to read:

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

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

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

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

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

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

(d) (1) In any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to forfeiture for nonuse because water has not been put to beneficial use, there shall be a rebuttable presumption that no use required to be included in a statement submitted under this part occurred unless that

use is included in a statement submitted under this part and that the statement is submitted within six months after it is required to be filed with the board.

(2) Paragraph (1) does not apply to any use that occurred before January 1, 2009.

SEC. 27. Item 3940-001-0439 of Section 2.00 of the Budget Act of 2009 is amended to read:

3940-001-0439—For support of State Water Resources Control Board.....	238,113,000
Schedule:	
(1) 10-Water Quality.....	439,650,000
(2) 20-Water Rights.....	<del>11,658,000</del>
	<u>15,408,000</u>
(3) 30.01-Administration.....	<del>20,886,000</del>
	<u>21,059,000</u>
(4) 30.02-Distributed Administration.....	<del>-20,886,000</del>
	<u>-21,059,000</u>
(5) Reimbursements.....	-8,932,000
(6) Amount payable from the General Fund (Item 3940-001-0001).....	-40,575,000
(7) Amount payable from the Unified Program Account (Item 3940-001-0028).....	-621,000
(8) Amount payable from the Waste Discharge Permit Fund (Item 3940-001-0193).....	-78,768,000
(9) Amount payable from the Marine Invasive Species Control Fund (Item 3940-001-0212).....	-103,000
(10) Amount payable from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund (Item 3940-001-0235).....	-2,039,000
(11) Amount payable from the Integrated Waste Management Account, Integrated Waste Management Fund (Item 3940-001-0387).....	-6,757,000
(12) Amount payable from the Water Recycling Subaccount (Item 3940-001-0419).....	-1,150,000

(13) Amount payable from the Drainage Management Subaccount (Item 3940-001-0422).....	-515,000
(14) Amount payable from the Seawater Intrusion Control Subaccount (Item 3940-001-0424).....	-222,000
(15) Amount payable from the Underground Storage Tank Tester Account (Item 3940-001-0436).....	-64,000
(16) Amount payable from the 1984 State Clean Water Bond Fund (Item 3940-001-0740).....	-322,000
(17) Amount payable from the Federal Trust Fund (Item 3940-001-0890)....	-51,353,000
(18) Amount payable from the Water Rights Fund (Item 3940-001-3058)....	<del>-7,447,000</del>
	<u>-11,197,000</u>
(19) Amount payable from the Watershed Protection Subaccount (Item 3940-001-6013).....	-250,000
(20) Amount payable from the Santa Ana River Watershed Subaccount (Item 3940-001-6016).....	-250,000
(21) Amount payable from the Lake Elsinore and San Jacinto Watershed Subaccount (Item 3940-001-6017).....	-150,000
(22) Amount payable from the Nonpoint Source Pollution Control Subaccount (Item 3940-001-6019).....	-200,000
(23) Amount payable from the State Revolving Fund Loan Subaccount (Item 3940-001-6020).....	-81,000
(24) Amount payable from the Wastewater Construction Grant Subaccount (Item 3940-001-6021).....	-23,000
(25) Amount payable from the Coastal Nonpoint Source Control Subaccount (Item 3940-001-6022).....	-150,000
(26) Amount payable from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Item 3940-001-6031).....	-3,000,000

- (27) Amount payable from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Item 3940-001-6051)..... -4,073,000
- (28) Amount payable from the Petroleum Underground Storage Tank Financing Account (Item 3940-001-8026)..... -618,000
- (29) Amount payable from the State Water Pollution Control Revolving Fund Administration Fund (Item 3940-001-9739)..... -5,532,000

Provisions:

1. Notwithstanding any other provision of law, upon approval and order of the Director of Finance, the State Water Resources Control Board may borrow sufficient funds for cash purposes from special funds that otherwise provide support for the board. Any such loans are to be repaid with interest at the rate earned in the Pooled Money Investment Account.
2. Of the amount contained in Schedule (2), \$3,750,000 shall be used to fund 25.0 permanent positions in support of water rights enforcement.

SEC. 28. Item 3940-001-3058 of Section 2.00 of the Budget Act of 2009 is amended to read:

3940-001-3058—For support of State Water Resources Control Board, for payment to Item 3940-001-0439, payable from the Water Rights Fund..... 7,447,000  
11,197,000

Provisions:

1. The increase in appropriation in this item shall be paid only from the fee revenue in the Water Rights Fund.

SEC. 29. Commencing with the 2010–11 fiscal year, and notwithstanding Section 13340 of the Government Code, three million seven hundred fifty thousand dollars (\$3,750,000) is hereby continuously appropriated, without regard to fiscal years,

on an annual basis, only from the fee revenue in the Water Rights Fund to the State Water Resources Control Board for the purposes of funding 25.0 permanent water right enforcement positions, as provided in Schedule (2) of Item 3940-001-0439 of Section 2.00 of the Budget Act of 2009, as amended by this act.

Amendment 3

On page 1, strike out lines 1 to 3, inclusive