



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

AGENDA

SOUTHEAST WATER COALITION

REGULAR MEETING OF THE ADMINISTRATIVE ENTITY

**CITY OF WHITTIER
PALM PARK AQUATIC CENTER
5703 PALM AVE.
WHITTIER, CA 90601**

**THURSDAY, SEPTEMBER 19, 2019
11:30 AM**

- 1. ROLL CALL**
- 2. PUBLIC COMMENTS**
- 3. CONSENT CALENDAR**

*****Consent Calendar items will be considered and approved in one motion unless removed by an Administrative Entity Member for discussion.*****

- a. **SEWC ADMINISTRATIVE ENTITY MINUTES OF JULY 18, 2019
SPECIAL MEETING**

Recommendation: Approve minutes as submitted.

*****End of Consent Calendar*****

4. UPDATE ON CLOSED SESSION CONSULTATION WITH SEWC LEGAL COUNSEL

Ray Cordero, AE Chair, City of Whittier

Recommendation: That the Administrative Entity take the following action:

Receive and file an update on the Southeast Water Coalition's closed session consultation with legal counsel at the August 29, 2019 Board of Directors Special Meeting.

5. SEWC LEAD AGENCY SUCCESSION

Ray Cordero, AE Chair, City of Whittier

Recommendation: That the Administrative Entity take the following actions:

- 1) Discuss current SEWC Lead Agency Succession schedule; and
- 2) Determine recommendation to Board of Directors on assigning SEWC Lead Agency/Chair and Vice-Chair from July 2020 through June 2022.

6. MOVING LOCATION OF SEWC BOARD OF DIRECTORS MEETINGS TO ALBERT ROBLES CENTER

Ray Cordero, AE Chair, City of Whittier

Recommendation: That the Administrative Entity take the following action:

Recommend the Board of Directors approve Resolution 2019-03, authorizing the Board of Directors change its meeting location to the Albert Robles Center for the remainder of the City of Whittier's Lead Agency tenure.

7. LEGISLATIVE UPDATE

Ray Cordero, AE Chair, City of Whittier

Recommendation: That the Administrative Entity take the following action:

Receive and file an update on current water-related bills under consideration in the State Legislature.

8. OCTOBER 3, 2019 BOARD OF DIRECTORS AGENDA

Kristen Sales, KJServices Environmental Consulting

Recommendation: Consider Draft SEWC JPA Board of Directors Agenda

9. WRITTEN COMMUNICATIONS

10. ADMINISTRATIVE ENTITY MEMBER COMMENTS

AMERICANS WITH DISABILITIES ACT: In compliance with the Americans with Disabilities Act of 1990, the City of Whittier is committed to providing reasonable accommodations for a person with a disability. Please call Veronica Barrios with the City of Whittier at (562) 567-9501, if special accommodations are necessary and/or if information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.

The next meeting of the Southeast Water Coalition Administrative Entity will be on Thursday, November 21, 2019, 11:30 am, Palm Park Aquatics Center, 5703 Palm Ave., Whittier, CA 90601.

I, Veronica Barrios, City of Whittier, do hereby certify, under penalty of perjury under the laws of the State of California that the foregoing notice was posted pursuant to Government Code Section 54950 Et. Seq. and City of Whittier Ordinance at the following locations: Whittier City Hall, Whittier Public Library, and the Whittwood Branch Library.

Dated: September 16, 2019



Veronica Barrios
Administrative Secretary
Department of Public Works

**MINUTES OF THE
SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY
SPECIAL MEETING OF THE ADMINISTRATIVE ENTITY**

**CITY OF WHITTIER
EMERGENCY OPERATIONS CENTER
13200 PENN ST.
WHITTIER, CA 90602**

**THURSDAY, JULY 18, 2019
11:30 AM**

The special meeting of the Southeast Water Coalition Joint Powers Authority Administrative Entity was called to order at 11:37 a.m. by AE Chair Kyle Cason. At the time the meeting was called to order a quorum of members were present. Roll call was taken with the following Administrative Entity members present:

1. ROLL CALL

Bob Ortega	City of Cerritos
Gina Nila, AE Vice-Chair	City of Commerce
Derwin Dy	City of Lakewood
Julian Lee	City of Norwalk
Adriana Figueroa	City of Paramount
Joanna Moreno	City of Vernon
Kyle Cason, AE Chair	City of Whittier

Others in Attendance	
Sarina Morales-Choate	City of Santa Fe Springs
Mark Ammenato	City of Vernon
Kristen Sales	KJServices Environmental Consulting

2. PUBLIC COMMENTS

No Public Comments were received.

3. **CONSENT CALENDAR**

Administrative Entity (AE) Chair Kyle Cason (Whittier) called for a motion to approve the Consent Calendar.

Julian Lee (Norwalk) made a motion to approve the Consent Calendar. The motion was seconded by Gina Nila (Commerce). With an abstention from Joanna Moreno (Vernon), the motion was approved by a unanimous voice vote of the Administrative Entity members.

4. **AUTHORIZATION TO RETAIN AN AUDIT FIRM TO COMPLETE THE FISCAL YEAR 2018-2019 SEWC AUDIT**

Administrative Entity (AE) Chair Kyle Cason (Whittier) introduced this item.

AE Chair Cason stated that the audit firm White Nelson Diehl Evans (WNDE) had submitted a scope of work and fee proposal for the Fiscal Year 2018-2019 SEWC Audit for the amount of \$4,650, plus \$800 to prepare the State Controller's Special Districts Financial Transaction Report. This total cost of \$5,300 represents an increase of only \$150 from the FY 2017-18 Audit conducted by WNDE. AE Cason added that since the Board of Directors increased the Audit line item to \$6,000 for the current fiscal year, SEWC has sufficient monies to pay for WNDE's proposed Audit, with funds remaining.

AE Chair Cason asked for a motion to authorize WNDE complete the Fiscal Year 2018-2019 SEWC Audit. The motion was made by Adriana Figueroa (Paramount) and seconded by Joanna Moreno (Vernon). The motion was approved by a unanimous voice vote of the Administrative Entity.

5. **RECEIVE AND FILE UPDATE ON THE CENTRAL BASIN MUNICIPAL WATER DISTRICT (CBMWD) RETAIL METER CHARGE**

Administrative Entity (AE) Chair Kyle Cason (Whittier) provided an overview of the history of the Central Basin's retail meter charge. AE Chair Cason stated that the Central Basin Board had voted to approve a \$2/meter charge on all CB meters for one year.

AE Chair Cason added that on July 22, the purveyors will be bringing a resolution to amend this decision to conditionally accept this charge, provided a sunset clause is added. AE Vice-Chair Gina Nila (Commerce) stated that while the purveyors provisionally accepted CB's tolling agreement, they were including in their resolution a 30-day notice to sue Central Basin if so decided.

Adriana Figueroa (Paramount) added that the purveyors had requested \$1million cut from personnel costs, but the Central Basin Board refused to cut personnel and Board Member benefits; eventually, the CB Board passed \$350,000 in personnel costs. The purveyors' 7/22 resolution requires \$300,000 in additional cuts to make the \$2/meter charge feasible. AE Member Figueroa stated the purveyors' resolution

stipulated the \$2/meter charge would be in place for 3 years maximum, during which Central Basin would pursue a parcel tax to recoup costs, and the purveyors would toll their rights to sue Central Basin for three years, if the resolution was agreed upon.

Derwin Dy (Lakewood) stated that the outcome of the July 22, 2019 Central Basin meeting with purveyors would determine if Lakewood would file a lawsuit against Central Basin. AE Member Dy added that other cities in the Central Basin service area would join the suit.

AE Chair Cason asked for a motion to receive and file the item. The motion was made by Julian Lee (Norwalk), and seconded by Gina Nila (Commerce). The motion was approved by a unanimous voice vote of the Administrative Entity.

6. **LEGISLATIVE UPDATE**

Kristen Sales (KJServices Environmental Consulting) provided an overview of this item.

Ms. Sales stated that the California Legislature was on Summer Recess from July 12 - August 12, 2019. Since the AE had last met, SB 200 (Monning) and the Safe and Affordable Drinking Water Fund in the Governor's FY 2019-2020 Budget had both passed. Ms. Sales stated that this means no water tax was included in the establishment of the SADWF, instead the funding will come from a combination of the State's General Fund and Greenhouse Gas Reduction Fund.

Ms. Sales stated that three Cristina Garcia-backed bills had passed and been chaptered into law:

- AB-756, which authorizes the State Water Board to order public water systems to monitor for PFOA/PFOS
- AB-591, amending the definition of "representative" in relation to the Central Basin Municipal Water District Board of Directors
- AB-1220, prohibits a member public agency from having fewer than the number of representatives on the Metropolitan Water District Board of Directors they had as of January 1, 2019

Ms. Sales added that SB-669 (Caballero) had been placed on suspense file, AB-217 (Eduardo Garcia) died, and AB-134 (Bloom) would probably also be amended into another subject, since it is connected to AB-217.

AE Chair Cason asked for a motion to receive and file the item. The motion was made by Adriana Figueroa (Paramount) and seconded by Bob Ortega (Cerritos). The motion was approved by a unanimous voice vote of the Administrative Entity.

7. **AUGUST 1, 2019 BOARD OF DIRECTORS AGENDA**

Ms. Kristen Sales (KJServices) provided an overview of the following items to

present at the next Policy Board meeting on August 1, 2019:

- 1) Presentation on PFOA/PFOS
- 2) Tour of ARC facility from WRD
- 3) Approval of 2018-19 SEWC Audit with WNDE
- 4) Update on CBMWD Board meeting of 7/22 re: Retail Meter Charge

8. **WRITTEN COMMUNICATIONS**

No written communications were received.

9. **ADMINISTRATIVE ENTITY MEMBER COMMENTS**

Julian Lee (Norwalk) announced he would be resigning his position at the City of Norwalk at the end of July. Mr. Lee stated that Norwalk would be assigning a new representative to serve on the SEWC Administrative Entity. Mr. Lee thanked the AE members for their time served together.

Joanna Moreno (Vernon) asked the AE members if they had any resources on how to deal with the new water purveyor billing requirements, due to the passage of Senate Bill 998. Julian Lee (Norwalk) stated that he had received guidelines from the CMUA and a webinar on the reporting requirements, which he would email to Ms. Moreno.

10. **ADJOURNMENT**

AE Chair Cason adjourned the meeting at 12:21 p.m.

CHAIR

ATTEST:



Southeast Water Coalition

A joint powers authority to protect the Central Groundwater Basin

SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY AGENDA REPORT

Date: September 19, 2019
To: Southeast Water Coalition Administrative Entity
From: Ray Cordero, AE Chair, City of Whittier

Subject: Update on Closed Session Consultation with SEWC Legal Counsel

Recommendation: That the Administrative Entity take the following action:

Receive and file an update on the Southeast Water Coalition's closed session consultation with legal counsel at the August 29, 2019 Board of Directors Special Meeting.

Background

At the August 29, 2019 Special Meeting of the Board of Directors, the Board met in closed session to discuss SEWC involvement in contributing funds to a potential lawsuit filed against Central Basin Municipal Water District by local water purveyors, challenging Central Basin's proposed retail meter charge.

The Board voted to allocate up to \$10,000 to the Central Basin lawsuit, inclusive of filing an amicus brief in favor of the purveyors, with the option of returning to the issue at a later date to discuss further support.

This motion was made by Board Member Todd Rogers (Lakewood), and seconded by Board Member Alex Saab (Downey). The motion received nine (9) Aye votes from Board Members from Vernon, South Gate, Commerce, Pico Rivera, Downey, Lakewood, Norwalk, Paramount and Santa Fe Springs; and one No vote from the Board Member from Whittier. The Board Member from Cerritos was absent during this vote.



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**SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY
AGENDA REPORT**

Date: September 19, 2019
To: Southeast Water Coalition Administrative Entity
From: Ray Cordero, AE Chair, City of Whittier

Subject: SEWC Lead Agency Succession

Recommendation: That the Administrative Entity take the following actions:

- 1) Discuss current SEWC Lead Agency Succession schedule; and
- 2) Determine recommendation to Board of Directors on assigning SEWC Lead Agency/Chair and Vice-Chair from July 2020 through June 2022.

Background

In August, 2017, the SEWC Administrative Entity (AE) proposed a new strategy of succession for Lead Agency that would establish a fixed schedule ensuring all SEWC member agencies acted as Lead Agency for a two-year term. This SEWC Lead Agency Transition History document was approved and adopted by the Board of Directors at their meeting on October 5, 2017.

On October 5, 2017, the Board of Directors approved the Lead Agency succession schedule; the motion stated:

Policy Board votes to establish a fixed succession of Lead Agency based on the Lead Agency Transition History document, with the provision that if a city is unable to act as Lead Agency, the next city in line for Lead Agency fills the position, and the next city in line after that becomes Vice-Chair.

The City of Whittier is the current Lead Agency and its two-year term ends June 30, 2020. The City of Commerce is currently the Vice-Chair and slated to become Lead Agency for the period beginning July 1, 2020 through June 30, 2022.

Discussion

The Board of Directors representative for the City of Commerce has stated that the City will be unable to perform the duties of SEWC Lead Agency during their proposed tenure from July 1, 2020 through June 30, 2022.

Because of this, according to the Board-approved policy of Lead Agency Succession, the City of Vernon would take Commerce's spot as incoming Lead Agency. The City of Norwalk would become the Vice-Chair for the same term of July 1, 2020 through June 2022.

It is recommended the Administrative Entity discuss the Lead Agency Succession, and determine a recommendation to make to the Board of Directors at their next meeting on October 3, 2019.

Attachment(s):

1. SEWC Lead Agency Transition History
2. Policy of Administrative Entity Chair and Vice-Chair duties

Lead Agency Transition History

- Norwalk 1991--1994
- Pico Rivera 1994--1996
- Whittier 1996--1998
- Downey 1998--2000
- South Gate 2000--2002
- Norwalk 2002--2004
- Cerritos July 2004 -- June 2006
- Paramount July 2006 -- June 2008
- Lakewood July 2008 -- June 2010
- Santa Fe Springs July 2010 -- June 2012
- Pico Rivera July 2012 -- June 2014
- South Gate July 2014 -- June 2016
- Downey July 2016 -- June 2018

- Commerce Unknown
- Vernon Unknown

Proposed Fixed Succession of Lead Agency going forward:

- Whittier July 2018 -- June 2020
- Commerce July 2020 -- June 2022
- Vernon July 2022 -- June 2024

Whittier is currently the SEWC Vice-Chair. Whittier slated to be SEWC Lead Agency next after Downey. Following current procedure, the Vice-Chair will be adopted at the same time as the Chair.

After the Chair's two-year term, the Vice-Chair will then become the Chair. (ex. when Whittier becomes Lead Agency in July 2018, Commerce will become Vice-Chair.)

Beginning in July 2024, Lead Agency schedule repeats: Norwalk, Cerritos, Paramount, Lakewood, Santa Fe Springs, Pico Rivera, South Gate, Downey, Whittier, Commerce, Vernon, etc.

**Policy for Southeast Water Coalition (SEWC)
Administrative Entity (AE)
Chair and Vice-Chair Positions**

At their August 29, 2017 Special Meeting, the AE reviewed the Chair and Vice-Chair Policies that were established in 2012, and discussed amendments to be made to the terms and conditions of the SEWC AE Chair and Vice-Chair. At their September 21, 2017 Regular Meeting, the AE adopted the following terms:

- That the AE Chair be a representative from the Lead Agency;
- That the AE Chair serve a two-year term, concurrent with the two-year term of the Lead Agency;
- That the AE Vice-Chair be selected at the same time as the AE Chair;
- That the AE Vice-Chair be a representative from the incoming Lead Agency, in accordance with the fixed schedule of succession established in the SEWC Lead Agency Transition History document;
- That the AE Vice-Chair serve a two-year term, concurrent with the two year term of the AE Chair;
- That the AE Vice-Chair become the AE Chair after the Chair's two-year term is completed, concurrent with the change in Lead Agency;
- That the AE Chair and Vice-Chair positions remain consistent with the Chair and Vice-Chair positions of the Policy Board;
- If the office of the AE Chair becomes vacant:
 - That the AE Vice-Chair becomes Acting Chair until Lead Agency selects a duly appointed representative to fill the vacancy of AE Chair; and
 - That a vacancy in the position of the Vice-Chair be remedied in the same manner.

**SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY
AGENDA REPORT**

Date: September 19, 2019
To: Southeast Water Coalition Administrative Entity
From: Ray Cordero, AE Chair, City of Whittier

Subject: Moving Location of SEWC Board of Directors Meetings to Albert Robles Center

Recommendation: That the Administrative Entity take the following action:

Recommend the Board of Directors approve Resolution 2019-03, authorizing the Board of Directors change its meeting location to the Albert Robles Center for the remainder of the City of Whittier's Lead Agency tenure.

Background:

On July 7, 2018, the Board of Directors adopted Resolution 2018-01, designating the City of Whittier as the SEWC Lead Agency for the period July 1, 2018 through June 30, 2020 and providing for meetings of the Board of Directors and Administrative Entity. On October 4, 2018, the Board of Directors adopted Resolution 2018-02, setting the meeting time and location of the Board of Directors to 6:30 P.M. at the City of Whittier Emergency Operations Center.

After the August 29, 2019 Special Meeting of the Board of Directors at the Albert Robles Center, SEWC Board Chair Fernando Dutra (Whittier), suggested the Board meet at the ARC for the remainder of the Board meetings during Whittier's Lead Agency tenure.

The SEWC JPA Agreement requires that Board meetings are held in compliance with the Brown Act. Government Code Section 54954(d), part of the Brown Act, allows joint powers authorities to meet anywhere within the territory of at least one of its member agencies. While Board meetings have historically been held in the Lead Agency city, there is nothing precluding the Board from meeting in another SEWC member city.

It is recommended the Administrative Entity recommend the Board approves Resolution 2019-03 at their next meeting on October 3, 2019.

Attachment(s):

1. Resolution 2019-03

RESOLUTION NO. 2019-03

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY
CHANGING THE MEETING LOCATION OF THE BOARD OF DIRECTORS

WHEREAS, On June 7, 2018, the Board of Directors approved Resolution 2018-01 designating the City of Whittier to serve as Lead Agency for the period beginning July 1, 2018 through June 30, 2020.

WHEREAS, On October 4, 2018, the Board of Directors approved Resolution 2018-02, setting the place and time of the Board of Directors meetings effective October 4, 2018.

WHEREAS, the Lead Agency desires to change the Board of Directors meeting location.

THE BOARD OF DIRECTORS OF THE SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. BOARD OF DIRECTORS MEETINGS. The Board of Directors shall meet, as necessary, on the first Thursday of every even numbered month at 6:30 P.M. at the Albert Robles Center for Water Recycling and Environmental Learning (ARC), 4320 San Gabriel Pkwy, Pico Rivera, CA, 90660.

Section 2. This Resolution changes the location of regular meetings of the Board of Directors effective October 3, 2019.

Section 3. The Chair of the Board of Directors and the Chair of the Administrative Entity shall certify to the passage and adoption of this Resolution.

PASSED, APPROVED, and ADOPTED this 3rd day of October 2019.

Chair, Board of Directors

ATTEST:

Administrative Entity Chair



A joint powers authority to protect the Central Groundwater Basin

**SOUTHEAST WATER COALITION
JOINT POWERS AUTHORITY
AGENDA REPORT**

Date: September 19, 2019
To: Southeast Water Coalition Administrative Entity
From: Ray Cordero, AE Chair, City of Whittier

Subject: Legislative Update

Recommendation: That the Administrative Entity take the following action:

Receive and file an update on current water-related bills under consideration in State Legislature

Senate Bill 1, as amended, Atkins. California Environmental, Public Health, and Workers Defense Act of 2019.

Current state law regulates the discharge of air pollutants into the atmosphere. The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Safe Drinking Water Act establishes standards for drinking water and regulates drinking water systems. The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and generally prohibits the taking of those species. This bill would, until January 20, 2025, require specified agencies to take prescribed actions regarding certain federal requirements and standards pertaining to air, water, and protected species, as specified. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

First introduced in December, 2018, SB1 is designed to combat the weakening and repealing of Federal air, water, wildlife, and environmental quality standards under the Trump Administration. SB1 would amend sections of the Fish and Game Code, Health and Safety Code and Water Code to ensure that the regulations would not be eroded to any weaker standard prior to January 2017.

The September 3, 2019 revision of SB1 enacted major changes to the Bill as originally written. According to SEWC's Legislative Counsel:

On September 3, 2019, SB 1 was substantially amended (in Section 13050) to go beyond the author's stated intent. The bill expands the definition of waste which is currently an open question of law in pending litigation. Additionally, the recent

SEWC ADMINISTRATIVE ENTITY AGENDA REPORT- REGULAR MTG. OF 9/19/19
LEGISLATIVE UPDATE

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amendments to SB 1 would shift old operating requirements to protect fish onto the State Water Project (SWP).

Over the last several months, the opposition has engaged in good faith discussions with the Author's office, supporters of the bill, the Newsom administration, and all relevant state agencies seeking to find resolution to the outstanding issues. Those issues are within the language in the Endangered Species Act (ESA) section that continues to compromise the ability of the state and local water managers to advance the Voluntary Agreements and other meaningful improvements to water management. The Voluntary Agreements are essential to achieving a comprehensive approach of flow and non-flow measures to provide reliable water supplies for tens of millions of California residents, farmers, and wildlife, as well as enhance ecosystems. Mandating old federal requirements on top of CESA protections would have precluded the State Water Project from being able to move and store 750,000-acre feet of water to approximately 7.5 million Californians this year. In future drought years, the ability for California to adaptively manage its water supplies is even more critical.

Of primary concern to SEWC is the repealing of the Voluntary Agreements, which allow purveyors to import water from the State Water Project, assuring stable water availability, affordability and quality.

SB1 is opposed by the Association of California Water Agencies (ACWA), and the Metropolitan Water District of Southern California has taken a position of Oppose Unless Amended.

Status

Assembly Floor - 3rd reading -- as of September 10, 2019

September 13, 2019 was the last day for bills introduced during the current session to pass the House and Senate. The Governor must sign or veto Bills on his desk by October 13, 2019.

Attachment(s):

1. Email from Paul Gonsalves of Joe A. Gonsalves & Son
2. SB 1 - Text of Bill

From: Paul Gonsalves <Paul@gonsalvi.com>

To: kjserv@aol.com <kjserv@aol.com>

Cc: Jason Gonsalves <Jason@gonsalvi.com>

Subject: Water Legislation

Date: Tue, Sep 10, 2019 11:45 am

Attachments: 2019 Water Legislation.pdf (562K)

Hi Kristen,

As you can imagine, there are a number of bills moving through the legislature regarding water. Being that this is the last week of the Legislative session, I'm certain there will be some last minute changes to many bills! That being said, the major update I want to provide you is on SB 1.

On September 3, 2019, SB 1 was substantially amended (in Section 13050) to go beyond the author's stated intent. The bill expands the definition of waste which is currently an open question of law in pending litigation. Additionally, the recent amendments to SB 1 would shift old operating requirements to protect fish onto the State Water Project (SWP).

Over the last several months, the opposition has engaged in good faith discussions with the Author's office, supporters of the bill, the Newsom administration, and all relevant state agencies seeking to find resolution to the outstanding issues. Those issues are within the language in the Endangered Species Act (ESA) section that continues to compromise the ability of the state and local water managers to advance the Voluntary Agreements and other meaningful improvements to water management. The Voluntary Agreements are essential to achieving a comprehensive approach of flow and non-flow measures to provide reliable water supplies for tens of millions of California residents, farmers, and wildlife, as well as enhance ecosystems. Mandating old federal requirements on top of CESA protections would have precluded the State Water Project from being able to move and store 750,000-acre feet of water to approximately 7.5 million Californians this year. In future drought years, the ability for California to adaptively manage its water supplies is even more critical.

With just ten days before session is to adjourn, SB 1 was amended to advance ESA language that:

1. Still threatens the Voluntary Agreements.
2. dismantles agreed upon language between stakeholders.
3. Removes the quarterly listing process and 30-day comment period with no Administrative Procedure Act process substitution.
4. Inserts significant new water law that is likely to impact California farms and businesses without any public or policy committee review.
5. Eliminates sunseting the entire bill in 2025.
6. Opens 10 years of negotiations resolving the state wetland definition and procedures for discharges of dredged or fill material to Waters of the State.

Earlier this week, Rachel Wagoner (Deputy Legislative Secretary for Governor Newsom) pulled the SB 1 coalitions into a meeting with Kip Lipper (Senate President Pro Tems Office), Tom Gibson (Undersecretary of Resources Agency) and State Water Board staff to discuss the amendments. The coalition members present were Chamber, Agricultural Groups, State Water Contractors, and the California Building Industry Association.

The State Water Contractors explained concerns with the ESA section of the bill. They asked they strike the language in Section 2076.7(c). Kip pushed back and they offered alternative amendments, which were sent to Rachel, Kip and

Tom Gibson. Others weighed in on the other amendments including the application of CESA to the federal project and new provision on WOTUS that expand the definition of waste to include dredge and fill, a matter that is the subject of litigation.

Additionally, the Newsom Administration sent a set of amendments to Kip, but it's now up to him and Senate President Pro Tem Atkins to decide the path to take. The coalition has been meeting with members all week and raising concerns consistent with the letter and floor alert. The floor alert request Senate President Pro Tem Atkins to accept the following changes to her bill:

- Remove Section 2076.7(c) from the changes proposed to the CA Endangered Species Act;
- Delete Section 2057 which adds a new section to the CA Fish and Game Code;
- In Section 13050 (d)(1), delete "pollutants, dredged or fill materials, or" and delete Section 13050 (d)(2)
- Delete Section 13050 (e)(1) and remove Sections 13050 (e)(2)

This bill still faces many hurdles and it is unclear if it will garner the necessary votes to proceed this year. I have attached for your review a copy of the bill, as amended on September 3 (Does not reflect the amendments being negotiated), along with a copy of ACWA's Floor Alert.

Additionally, I have attached a report that will provide you with the status of most water related legislation from this year. Please review the attached information and feel free to contact me with any questions or concerns.

Thank you,
Paul

Paul Gonsalves

Joe A. Gonsalves & Son

Office: 916-441-0597

From

Date: September 9, 2019 at 7:25:11 PM PDT

To: Jason@Gonsalvi.com

Subject: Water related legislation for SEWC meeting

Hi Jason,

Do you have any updates on water-related legislation that would be of interest to the Southeast Water Coalition? I know this Friday 13th is the last day for the House & Senate to pass bills introduced this leg session. Our SEWC Administrative Entity meeting is Thursday, the 19th; would like to provide an update on any bills that passed or were defeated at that meeting.

AMENDED IN ASSEMBLY SEPTEMBER 3, 2019

AMENDED IN ASSEMBLY JULY 1, 2019

AMENDED IN SENATE MAY 21, 2019

AMENDED IN SENATE APRIL 11, 2019

SENATE BILL

No. 1

Introduced by Senators Atkins, Portantino, and Stern
(Coauthor: Senator Hueso)
(Coauthor: Assembly Member Gloria)

December 3, 2018

An act to *add Section 2057 to, and to add and repeal Section 2017 of Sections 2017 and 2076.7 of, the Fish and Game Code, and to add and repeal Title 26 (commencing with Section 120000) of the Government Code, to add and repeal Section 116365.04 of the Health and Safety Code, and to amend Sections 13050, 13265, and 13350 of, and to add and repeal Sections 13250 and 13377.1 of, the Water Code, relating to public welfare.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, Atkins. California Environmental, Public Health, and Workers Defense Act of 2019.

(1) The federal Clean Air Act regulates the discharge of air pollutants into the atmosphere. The federal Clean Water Act regulates the discharge of pollutants into water. The federal Safe Drinking Water Act establishes drinking water standards for drinking water systems. The federal Endangered Species Act of 1973 generally prohibits activities affecting threatened and endangered species listed pursuant to that act unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

Existing state law regulates the discharge of air pollutants into the atmosphere. The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Safe Drinking Water Act establishes standards for drinking water and regulates drinking water systems. The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and generally prohibits the taking of those species.

This bill ~~would~~ *would, until January 20, 2025,* require specified agencies to take prescribed actions regarding certain federal requirements and standards pertaining to air, water, and protected species, as specified. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

This bill would revise the definition of “waste” and “waters of the state” for purposes of the Porter-Cologne Water Quality Control Act and would revise the enforcement provisions of that act, as provided.

(2) Existing law provides for the enforcement of laws regulating the discharge of pollutants into the atmosphere and waters of the state. Existing law provides for the enforcement of drinking water standards. Existing law provides for the enforcement of the California Endangered Species Act.

This bill ~~would~~ *would, until January 20, 2025,* authorize a person acting in the public interest to bring an action to enforce certain ~~federal~~ standards if specified conditions are satisfied.

(3) Existing federal law, including the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and the Federal Coal Mine Health and Safety Act of 1969, generally establishes standards for workers’ health and safety.

Existing state law, including the California Occupational Safety and Health Act of 1973, generally establishes standards for workers’ health and safety.

This bill ~~would~~ *would, until January 20, 2025,* require specified agencies to take prescribed actions regarding certain requirements and standards pertaining to workers’ health and safety.

~~(4) This bill would make the above provisions inoperative as of January 20, 2025, and would repeal them as of January 1, 2026.~~

~~(5)~~

(4) Existing law makes it unlawful to take a bird, mammal, fish, reptile, or amphibian, except as authorized by law.

This bill would make it unlawful for a person in California to transport, sell, *offer for sale*, *possess with the intent to sell*, receive, acquire, or purchase any fish, wildlife, or plant that was taken, possessed, transported, or sold in violation of any law, treaty, regulation, policy, or finding of the United States with regard to *national or* international trade of fish, wildlife, or plants in effect on January 19, 2017. The bill would make these provisions inoperative on January 20, 2025, and would repeal them on January 1, 2026.

Under existing law, a violation of the Fish and Game Code is a crime.

Because the above provision would be part of the Fish and Game Code, a violation of which would be a crime, this bill would impose a state-mandated local program.

~~(6)~~

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

- 1 SECTION 1. Section 2017 is added to the Fish and Game Code,
- 2 to read:
- 3 2017. (a) Unless otherwise authorized under state law, it is
- 4 unlawful for a person in this state to transport, sell, *offer for sale*,
- 5 *possess with the intent to sell*, receive, acquire, or purchase any
- 6 fish, wildlife, or plant that was taken, possessed, transported, or
- 7 sold in violation of any law, treaty, regulation, policy, or finding
- 8 of the United States with regard to *national or* international trade
- 9 of fish, wildlife, or plants in effect on January 19, 2017.
- 10 (b) Nothing in this section shall prohibit a person from
- 11 transporting, selling, receiving, acquiring, or purchasing any
- 12 cannabis or hemp as allowed under state law.

1 (c) (1) This section shall become inoperative on January 20,
2 2025, and, as of January 1, 2026, is repealed.

3 (2) Notwithstanding subparagraph (1), an action brought to
4 enforce this section on or before January 20, 2025, may proceed
5 to final judgment.

6 *SEC. 2. Section 2057 is added to the Fish and Game Code, to
7 read:*

8 *2057. The provisions of this chapter are measures “relating
9 to the control, appropriation, use, or distribution of water” within
10 the meaning of Section 8 of the federal Reclamation Act of 1902
11 (43 U.S.C. Sec. 383) and shall apply to the United States Bureau
12 of Reclamation’s operation of the federal Central Valley Project.*

13 *SEC. 3. Section 2076.7 is added to the Fish and Game Code,
14 to read:*

15 *2076.7. (a) Notwithstanding Sections 2071 to 2075.5, inclusive,
16 in order to ensure no backsliding as a result of a decrease in
17 endangered or threatened species protections by the federal
18 government, the commission may consider whether to adopt a
19 regulation that adds a species to the list of endangered species or
20 to the list of threatened species as an emergency regulation
21 pursuant to Chapter 3.5 (commencing with Section 399) of Division
22 1 if the commission determines, in consultation with the
23 department, that a federal action subsequent to January 19, 2017,
24 under the federal Endangered Species Act of 1973 (16 U.S.C. Sec.
25 1531 et seq.) results in a decrease in protection for that species
26 and listing under this chapter could provide protection for that
27 species. If the commission lists a species by emergency regulation
28 pursuant to this section, the department shall promptly commence
29 a status review pursuant to Sections 2074.6 and 2074.8, and the
30 commission shall determine whether to list the species beyond the
31 duration of the emergency pursuant to Sections 2075 and 2075.5.*

32 *(b) A federal action warranting a determination by the
33 commission pursuant to subdivision (a) may include, but is not
34 limited to, a decision by either the United States Fish and Wildlife
35 Service or the National Marine Fisheries Service not to protect a
36 species or to decrease protection to a species listed under the
37 federal Endangered Species Act of 1973 that relies, in whole or
38 in part, upon any amendments to regulations implementing the
39 federal Endangered Species Act of 1973 that occurred after
40 January 19, 2017.*

1 (c) In authorizing the take of any species listed under this section
2 during the pendency of the emergency regulation, the commission,
3 in authorizing the take of any species pursuant to Section 2084,
4 or the department, in authorizing the take of any species pursuant
5 to this chapter, shall apply the protections provided by any federal
6 biological opinions, incidental take permits, incidental take
7 statements, or rules promulgated under Section 4(d) of the federal
8 Endangered Species Act of 1973, in effect as of January 19, 2017,
9 unless the commission or the department determines that those
10 protections do not satisfy the requirements of this chapter.

11 (d) The department shall monitor and report to the commission
12 at least quarterly with respect to any actions of the federal
13 government that may constitute an emergency as described in this
14 section.

15 (e) For authorizations issued by the department pursuant to
16 subdivision (c), the California Environmental Quality Act (Division
17 13 (commencing with Section 21000) of the Public Resources
18 Code) shall not apply.

19 (f) The Legislature intends that the commission and department
20 will be provided sustainable funding sufficient to fully implement
21 the requirements of this section and resulting obligations.

22 (g) The commission shall notify affected or interested persons
23 of the adoption of any emergency regulation under this section
24 pursuant to the methods described in Section 2074.4.

25 (h) This section is adopted to protect against direct challenges
26 to species protection from the current federal administration and
27 accordingly shall become inoperative on January 20, 2025, and,
28 as of January 1, 2026, is repealed.

29 ~~SEC. 2. Title 24 (commencing with Section 120000) is added~~
30 ~~to the Government Code, to read:~~

31 SEC. 4. Title 26 (commencing with Section 120000) is added
32 to the Government Code, to read:

1 TITLE ~~24-26~~. CALIFORNIA ENVIRONMENTAL, PUBLIC
2 HEALTH, AND WORKERS DEFENSE ACT OF 2019

3
4 DIVISION 1. GENERAL PROVISION

5
6 120000. This title shall be known, and may be cited, as the
7 California Environmental, Public Health, and Workers Defense
8 Act of 2019.
9

10 DIVISION 2. ENVIRONMENT, NATURAL RESOURCES,
11 PUBLIC HEALTH, AND WORKERS HEALTH AND SAFETY

12
13 CHAPTER 1. FINDINGS AND DECLARATIONS

14
15 120010. (a) The Legislature finds and declares all of the
16 following:

17 (1) For over eight decades, California and its residents have
18 relied on federal laws, including the federal Clean Air Act (42
19 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act
20 (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe
21 Drinking Water Act (42 U.S.C. Sec. 300f et seq.), the federal
22 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.),
23 the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201
24 et seq.), the federal Occupational Safety and Health Act of 1970
25 (29 U.S.C. Sec. 651 et seq.), and the Federal Coal Mine Health
26 and Safety Act of 1969 (30 U.S.C. Sec. 801 et seq.), along with
27 their implementing regulations and remedies, to protect our state’s
28 public health, safety, environment, and natural resources.

29 (2) These federal laws establish standards that serve as the
30 baseline level of public health, safety, and environmental
31 protection, while expressly authorizing states like California to
32 adopt more protective measures.

33 (3) Beginning in 2017, a new presidential administration and
34 United States Congress have signaled a series of direct challenges
35 to these federal laws and the protections they provide, as well as
36 to the underlying science that makes these protections necessary,
37 and to the rights of the states to protect their own environment,
38 natural resources, and public health and safety as they see fit.

39 (b) It is therefore necessary for the Legislature to enact
40 legislation that will ensure continued protections for the

1 environment, natural resources, and public health and safety in the
2 state even if the federal laws specified in paragraph (1) of
3 subdivision (a) are undermined, amended, or repealed.

4 120011. The purposes of this division are to do all of the
5 following:

6 (a) Retain protections afforded under the federal laws specified
7 in paragraph (1) of subdivision (a) of Section 120010 and
8 regulations implementing those federal laws in existence as of
9 January 19, 2017, regardless of actions taken at the federal level.

10 (b) Protect public health, safety, and welfare from any actual
11 or potential adverse effect that reasonably may be anticipated to
12 occur from hazards and pollution, including the effects of climate
13 change.

14 (c) Preserve, protect, and enhance the environment and natural
15 resources in California, including, but not limited to, the state's
16 national parks, national wilderness areas, national monuments,
17 national seashores, and other areas with special national or regional
18 natural, recreational, scenic, or historic value.

19 (d) Prevent work-related and environmental illness, injury, or
20 death from chemicals and other pollutants and hazards.

21 (e) Ensure that economic growth will occur in a manner
22 consistent with the protection of public health and safety and the
23 environment, and the preservation of existing natural resources.

24 (f) Ensure that any decision made by a public agency that may
25 adversely impact public health and safety, the environment, or
26 natural resources is made only after careful evaluation of all the
27 consequences of that decision and after adequate procedural
28 opportunities for informed public participation in the
29 decisionmaking process.

30

31

CHAPTER 2. GENERAL PROVISIONS

32

33 120030. (a) A state agency may adopt standards or
34 requirements pursuant to this title, including, but not limited to,
35 by emergency regulations in accordance with Chapter 3.5
36 (commencing with Section 11340) of Part 1 of Division 3 of Title
37 2.

38 (b) The adoption of emergency regulations in furtherance of
39 this title shall be deemed an emergency and necessary for the

1 immediate preservation of the public peace, health, and safety, or
2 general welfare.

3 (c) Notwithstanding Chapter 3.5 (commencing with Section
4 11340) of Part 1 of Division 3 of Title 2, emergency regulations
5 adopted by a state agency under this title shall not be subject to
6 review by the Office of Administrative Law and shall remain in
7 effect until revised or repealed by the state agency, or January 20,
8 2025, whichever comes first, as long as the emergency regulations
9 adopt the baseline federal standard without substantial
10 modification. *first.*

11
12 CHAPTER 3. OPERATIVE PROVISIONS

13
14 Article 1. Air

15
16 120040. For purposes of this article, the following definitions
17 apply:

18 (a) “Air district” means an air quality management or air
19 pollution control district.

20 (b) “Baseline federal standards” means federal standards in
21 effect as of January 19, 2017, that were not otherwise permanently
22 enjoined by a federal court as of that date.

23 (c) “Federal standards” means federal laws or federal regulations
24 implementing the federal Clean Air Act (42 U.S.C. Sec. 7401 et
25 seq.), *and which may affect the achievement and maintenance of*
26 *any federal ambient air quality standard, hazardous air pollutant*
27 *standard, or greenhouse gas emission reduction applicable to the*
28 *state*, including, but not limited to, federal requirements for a state
29 implementation plan, federal requirements for the transportation
30 conformity program, and federal requirements for the prevention
31 of significant deterioration.

32 (d) “State analogue statute” means the California Global
33 Warming Solutions Act of 2006 (Division 25.5 (commencing with
34 Section 38500) of the Health and Safety Code) or Division 26
35 (commencing with Section 39000) of the Health and Safety Code.

36 (e) “State board” means the State Air Resources Board.

37 120041. Except as otherwise authorized by state law, all of the
38 following apply:

39 (a) The state board shall regularly assess proposed and final
40 changes to the federal standards.

1 (b) (1) At least ~~quarterly~~, *once every six months*, the state board
2 shall publish on its internet website and in the California
3 Regulatory Notice Register a list of changes made to the *baseline*
4 federal standards that may ~~impact California and provide an~~
5 ~~assessment on whether a change made to the federal standards is~~
6 ~~less protective of public health and safety, the environment, natural~~
7 ~~resources, or worker health and safety than the baseline federal~~
8 ~~standards~~; *affect the achievement and maintenance of any federal*
9 *ambient air quality standard, hazardous air pollutant standard,*
10 *or greenhouse gas emission reduction applicable to the state that*
11 *are subject to the jurisdiction of the state board. The state board*
12 *may opt not to publish this report if it determines, by majority vote*
13 *in a public meeting, that there has been no change to a federal*
14 *standard as compared to the baseline federal standard during an*
15 *applicable six-month time period, and notifies the appropriate*
16 *policy and fiscal committees of the Legislature.*

17 (2) If the state board determines that a change to the federal
18 standards ~~is less protective of public health and safety, the~~
19 ~~environment, natural resources, or worker health and safety than~~
20 ~~the baseline federal standards~~; *may affect the achievement and*
21 *maintenance of any federal ambient air quality standard,*
22 *hazardous air pollutant standard, or greenhouse gas emission*
23 *reduction applicable to the state, the state board shall consider*
24 ~~whether it should~~ *adopt a measure or use a nonregulatory option*
25 *in order to maintain the state's protections to be at least as*
26 *protective as the baseline federal standards.*

27 (3) The state board shall publish its list, ~~assessment, any~~
28 ~~preliminary determinations~~, and consideration for adoption at least
29 30 days before a vote on adoption on its internet website for public
30 comment.

31 (c) If the state board decides to adopt a measure pursuant to
32 subdivision (b), the state board shall adopt the measure by either
33 of the following procedures:

34 (1) As an emergency regulation in accordance with Section
35 120030.

36 (2) By promulgation or amendment of a state policy, plan, or
37 regulation.

38 (d) Notwithstanding any other law, the state board, when
39 adopting a measure under paragraph (2) of subdivision (c) may
40 adopt those measures in accordance with Section 100 of Title 1 of

1 the California Code of Regulations and the measures shall be
 2 deemed to be a change without regulatory effect pursuant to
 3 paragraph (6) of subdivision (a) of that section and not subject to
 4 additional notice, procedural, or other considerations contained in
 5 state analogue statutes identified in this article, as long as the
 6 measure adopts the baseline federal standards without substantial
 7 modification. *considerations*. Nothing in this chapter shall affect
 8 the imposition of sanctions under the federal Clean Air Act (42
 9 U.S.C. Sec. 7401 et seq.).

10 ~~(e) In the event that the citizen suit provision set forth in Section~~
 11 ~~7604 of Title 42 of the United States Code is amended to~~
 12 ~~substantially restrict, condition, abridge, or repeal the citizen suit~~
 13 ~~provision, including by limiting recovery of fees and costs, an~~
 14 ~~action may be brought pursuant to Section 120042 to enforce the~~
 15 ~~baseline federal standards, state standards enacted pursuant to the~~
 16 ~~federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), or other permit~~
 17 ~~conditions as authorized pursuant to the federal Clean Air Act,~~
 18 ~~and for which a cause of action was available pursuant to Section~~
 19 ~~7604 of Title 42 of the United States Code for those baseline~~
 20 ~~federal standards, state standards, or permit conditions as of~~
 21 ~~January 19, 2017.~~

22 ~~(f)~~

23 *(e)* This article does not prohibit the state board or air districts
 24 from establishing rules and regulations for California that are more
 25 stringent than the baseline federal standards.

26 120042. (a) An action may be brought *in superior court* by a
 27 person in the public interest ~~exclusively to enforce baseline federal~~
 28 ~~standards adopted as a measure pursuant to subdivision (e) of~~
 29 ~~Section 120041 if citizen suit enforcement of the newly adopted~~
 30 ~~standard is no longer available under federal law or an~~ *against the*
 31 *owner or operator of a source alleged to be in violation of any*
 32 *measure adopted under this article by the state board if the citizen*
 33 *suit provision set forth in Section 7604 of Title 42 of the United*
 34 *States Code is amended to substantially restrict, condition, abridge,*
 35 *or repeal the citizen suit provision, including by limiting recovery*
 36 *of fees and costs.*

37 ~~(b) An action may be brought by that person pursuant to~~
 38 ~~subdivision (e) of that pursuant to this section if all both of the~~
 39 following requirements are met:

1 (1) At least 60 days before initiating the action, a complainant
 2 provides a written notice to the Attorney General and the counsel
 3 for the state board, ~~a district attorney, county counsel, and counsel~~
 4 ~~of for the air district, and prosecutor~~ *district and district attorney*
 5 in whose jurisdiction the violation is alleged to have occurred, and
 6 the ~~defendant~~ *defendant*, identifying the specific provisions of the
 7 measure alleged to be violated.

8 (2) The Attorney General, ~~a district attorney, a city attorney,~~
 9 ~~county counsel,~~ counsel of the state board, *and counsel of an air*
 10 ~~district, or a prosecutor for the air district and the district attorney~~
 11 *in whose jurisdiction the violation is alleged to have occurred* has
 12 not commenced an action or has not been diligently prosecuting
 13 ~~the an administrative, civil, or criminal action.~~

14 ~~(b)~~

15 (c) Upon filing the action, *as well as serving the defendant*, the
 16 complainant shall ~~notify the Attorney General that the action has~~
 17 ~~been filed.~~ *serve a copy of the action to the Attorney General, the*
 18 *counsel for the state board, and the counsel for the air district and*
 19 *the district attorney in whose jurisdiction the violation is alleged*
 20 *to have occurred.*

21 ~~(e) The court may award attorney’s fees pursuant to Section~~
 22 ~~1021.5 of the Code of Civil Procedure, and expert fees and court~~
 23 ~~costs pursuant to Section 1032 of the Code of Civil Procedure, as~~
 24 ~~appropriate, for an action brought pursuant to this section.~~

25 (d) *Notwithstanding any other law requiring or authorizing*
 26 *higher penalties, civil penalties for a violation of any measure*
 27 *adopted pursuant to this article shall not exceed twenty-five*
 28 *thousand dollars (\$25,000) per day of violation. All penalties*
 29 *assessed and recovered in a civil action brought pursuant to this*
 30 *section or by settlement shall be deposited in the Air Pollution*
 31 *Control Fund created pursuant to Section 43015 of the Health and*
 32 *Safety Code and separately accounted for in that fund. Those*
 33 *moneys shall be expended by the state board, upon appropriation*
 34 *by the Legislature, consistent with the purposes of the Air Pollution*
 35 *Control Fund. A citizen who prevails in a suit pursuant to this*
 36 *section shall be entitle to attorney’s fees and costs from the*
 37 *defendant, and may recover in proportion to the success of the*
 38 *claim if not all claims are adjudicated in their favor.*

39 ~~(d)~~

1 (e) This section does not limit other remedies and protections
2 available under state or federal law.

3
4 Article 2. Water

5
6 120050. For purposes of this article, the following definitions
7 apply:

8 (a) “Baseline federal standards” means federal standards in
9 effect as of January 19, 2017, that were not otherwise permanently
10 enjoined by a federal court as of that date.

11 (b) “Board” means the State Water Resources Control Board.

12 (c) “Federal standards” means federal laws or federal regulations
13 implementing the federal Safe Drinking Water Act (42 U.S.C. Sec.
14 300f et seq.) and the Federal Water Pollution Control Act (33
15 U.S.C. Sec. 1251 et seq.) in effect as of January 19, 2017,
16 including, but not limited to, water quality standards, effluent
17 limitations, and drinking water standards.

18 (d) “Regional board” means a regional water quality control
19 board.

20 (e) “State analogue statute” mean the Porter-Cologne Water
21 Quality Control Act (Division 7 (commencing with Section 13000)
22 of the Water Code) or the California Safe Drinking Water Act
23 (Chapter 4 (commencing with Section 116270) of Part 12 of
24 Division 103 of the Health and Safety Code).

25 ~~120051. Except as otherwise authorized by state law, all of the~~
26 ~~following apply:~~

27 ~~(a) The board shall regularly assess proposed and final changes~~
28 ~~to the federal standards.~~

29 ~~(b) (1) At least quarterly, the board shall publish on its internet~~
30 ~~website and in the California Regulatory Notice Register a list of~~
31 ~~changes made to the federal standards that may impact California~~
32 ~~and provide an assessment on whether a change made to the federal~~
33 ~~standards is less protective of public health and safety, the~~
34 ~~environment, natural resources, or worker health and safety than~~
35 ~~the baseline federal standards.~~

36 ~~(2) If the board determines that a change to the federal standards~~
37 ~~is less protective of public health and safety, the environment,~~
38 ~~natural resources, or worker health and safety than the baseline~~
39 ~~federal standards, the board shall consider whether it should adopt~~

1 a measure in order to maintain the state's protections to be at least
2 as stringent as the baseline federal standards.

3 ~~(3) The state board shall publish its list, assessment, and~~
4 ~~consideration for adoption at least 30 days before a vote on~~
5 ~~adoption on its internet website for public comment.~~

6 ~~(e) If the board decides to adopt a measure pursuant to~~
7 ~~subdivision (b), the board shall adopt the measure by either of the~~
8 ~~following procedures:~~

9 ~~(1) As an emergency regulation in accordance with Section~~
10 ~~120030.~~

11 ~~(2) By promulgation or amendment of a state policy for water~~
12 ~~quality control, a water quality control plan, or regulation.~~

13 ~~(d) Notwithstanding any other law, the board, when adopting a~~
14 ~~measure under paragraph (2) of subdivision (c) may adopt those~~
15 ~~measures in accordance with Section 100 of Title 1 of the~~
16 ~~California Code of Regulations and the measures shall be deemed~~
17 ~~to be a change without regulatory effect pursuant to paragraph (6)~~
18 ~~of subdivision (a) of that section and not subject to additional~~
19 ~~notice, procedural, or other considerations contained in state~~
20 ~~analogue statutes identified in this article, as long as the measure~~
21 ~~adopts the baseline federal standard without substantial~~
22 ~~modification. Nothing in this chapter shall affect the imposition~~
23 ~~of sanctions under the federal Safe Drinking Water Act (42 U.S.C.~~
24 ~~Sec. 300f et seq.) or the Federal Water Pollution Control Act (33~~
25 ~~U.S.C. Sec. 1251 et seq.).~~

26 ~~(e) (1) In the event that the citizen suit provision set forth in~~
27 ~~Section 1365 of Title 33 of the United States Code is amended to~~
28 ~~substantially restrict, condition, abridge, or repeal the citizen suit~~
29 ~~provision, including limiting the recovery of fees and costs, an~~
30 ~~action may be brought pursuant to Section 120052 to enforce the~~
31 ~~baseline federal standards, state standards enacted pursuant to the~~
32 ~~Porter-Cologne Water Quality Control Act (Division 7~~
33 ~~(commencing with Section 13000) of the Water Code), as~~
34 ~~authorized pursuant to Title 33 of the United States Code, or other~~
35 ~~waste discharge requirements as authorized pursuant to the Section~~
36 ~~1342(b) of Title 33 of the United States Code, and for which a~~
37 ~~cause of action was available pursuant to Section 1365 of Title 33~~
38 ~~of the United States Code for those baseline federal standards,~~
39 ~~state standards, or waste discharge requirements as of January 19,~~
40 ~~2017.~~

1 ~~(2) In the event that the citizen suit provision set forth in Section~~
2 ~~300j-8 of Title 42 of the United States Code is amended to~~
3 ~~substantially restrict, condition, abridge, or repeal the citizen suit~~
4 ~~provision, including limiting the recovery of fees and costs, an~~
5 ~~action may be brought pursuant to Section 120052 to enforce the~~
6 ~~baseline federal standards, state standards enacted pursuant to the~~
7 ~~California Safe Drinking Water Act (Chapter 4 (commencing with~~
8 ~~Section 116270) of Part 12 of Division 103 of the Health and Safety~~
9 ~~Code), as authorized pursuant to Section 300g-2 of Title 42 of the~~
10 ~~United States Code, or other permit conditions as authorized~~
11 ~~pursuant to Section 300g-2 of Title 42 of the United States Code,~~
12 ~~and for which a cause of action was available pursuant to Section~~
13 ~~300j-8 of Title 42 of the United States Code for those baseline~~
14 ~~federal standards, state standards, or permit conditions as of~~
15 ~~January 19, 2017.~~

16 ~~(f) This article does not prohibit the board or the regional boards~~
17 ~~from establishing rules and regulations for California that are more~~
18 ~~stringent than the baseline federal standards.~~

19 ~~120052. (a)~~

20 *120051. (a) (1) In the event that the citizen suit provision set*
21 *forth in Section 1365 of Title 33 of the United States Code is*
22 *amended to substantially restrict, condition, abridge, or repeal*
23 *the citizen suit provision, including limiting the recovery of fees*
24 *and costs, an action may be brought in superior court by a person*
25 *in the public interest to enforce baseline federal standards, state*
26 *standards incorporated by or adopted under the Porter-Cologne*
27 *Water Quality Control Act (Division 7 (commencing with Section*
28 *13000) of the Water Code), as authorized pursuant to Title 33 of*
29 *the United States Code, or other waste discharge requirements,*
30 *as authorized pursuant to the Section 1342(b) of Title 33 of the*
31 *United States Code, and for which a cause of action was available*
32 *pursuant to Section 1365 of Title 33 of the United States Code,*
33 *and implementing regulations, in effect on January 19, 2017, for*
34 *those baseline federal standards, state standards, or waste*
35 *discharge requirements.*

36 *(2) In the event that the citizen suit provision set forth in Section*
37 *300j-8 of Title 42 of the United States Code is amended to*
38 *substantially restrict, condition, abridge, or repeal the citizen suit*
39 *provision, including limiting the recovery of fees and costs, an*
40 *action may be brought in superior court by a person in the public*

1 *interest to enforce the baseline federal standards, state standards*
2 *enacted pursuant to the California Safe Drinking Water Act*
3 *(Chapter 4 (commencing with Section 116270) of Part 12 of*
4 *Division 103 of the Health and Safety Code), as authorized*
5 *pursuant to Section 300g-2 of Title 42 of the United States Code,*
6 *or other permit conditions as authorized pursuant to Section*
7 *300g-2 of Title 42 of the United States Code, and for which a cause*
8 *of action was available pursuant to Section 300j-8 of Title 42 of*
9 *the United States Code in effect on January 19, 2017, for those*
10 *baseline federal standards, state standards, or permit conditions.*

11 (b) An action may be brought in the superior court by a person
12 in the public interest exclusively to enforce baseline federal
13 standards ~~adopted as a measure pursuant to subdivision (c) of~~
14 ~~Section 120051 in effect pursuant to Section 116365.04 of the~~
15 ~~Health and Safety Code, or Section 13250 or 13377.1 of the Water~~
16 ~~Code, if citizen suit enforcement of the newly adopted those~~
17 ~~standards is no longer available under federal law or an action may~~
18 ~~be brought by that person pursuant to subdivision (c) of that section~~
19 ~~if all of the following requirements are met: law.~~

20 (1)

21 (c) ~~At least 60 days before initiating the action, a complainant~~
22 ~~provides an action pursuant to this section, the plaintiff shall~~
23 ~~provide a written notice to the board, the Attorney General and~~
24 ~~the counsel for the board, General, and the regional board, a~~
25 ~~district attorney, county counsel, counsel of the regional board,~~
26 ~~and prosecutor in whose jurisdiction the violation is alleged to~~
27 ~~have occurred, and the defendant to the alleged violator identifying~~
28 ~~the specific provisions of the measure alleged to be violated.~~
29 ~~violation alleged.~~

30 (2) ~~The Attorney General, a district attorney, a city attorney,~~
31 ~~county counsel, counsel of the board, counsel of a regional board,~~
32 ~~or a prosecutor has not commenced an action or has not been~~
33 ~~diligently prosecuting the action.~~

34 (d) *An action shall not be commenced pursuant to this section*
35 *if the United States Environmental Protection Agency, the board,*
36 *the Attorney General, or a regional board, a district attorney, a*
37 *city attorney, a county counsel, or a prosecutor in whose*
38 *jurisdiction the violation is alleged to have occurred has*
39 *commenced and is diligently prosecuting an administrative, civil,*
40 *or criminal enforcement proceeding against the alleged violator.*

1 ~~(b)~~

2 (e) Upon filing the action, the complainant shall notify the
3 Attorney General that the action has been filed.

4 ~~(e)~~

5 (f) The court may award attorney's fees pursuant to Section
6 1021.5 of the Code of Civil Procedure, and expert fees and court
7 costs pursuant to Section 1032 of the Code of Civil Procedure, as
8 appropriate, for an action brought pursuant to this section.

9 (g) *Civil penalties that may be imposed by a superior court for
10 an action brought pursuant to this section are those that would
11 have been available under the Federal Water Pollution Control
12 Act (33 U.S.C. Sec. 1251 et seq.) or the federal Safe Drinking
13 Water Act (42 U.S.C. Sec. 300f et seq.) and their implementing
14 regulations, in effect on January 19, 2017, if those provisions were
15 still in effect and any baseline federal standard being enforced
16 were still enforceable under those provisions. Notwithstanding
17 any law requiring or authorizing higher penalties, civil penalties
18 assessed pursuant to this section shall not exceed the civil penalty
19 levels under Part 19 (commencing with Section 19.1) of Subchapter
20 A of Chapter 1 of Title 40 of the Code of Federal Regulations.
21 Penalties assessed and recovered in a civil action brought pursuant
22 to this section shall be deposited in the Waste Discharge Permit
23 Fund created pursuant to Section 13260 of the Water Code and
24 separately accounted for in that fund. Those moneys shall be
25 expended by the board, upon appropriation by the Legislature, to
26 assist regional boards, and other public agencies with authority
27 to clean up waste or abate the effects of the waste, in cleaning up
28 or abating the effects of the waste on waters of the state or for the
29 purposes authorized in Section 13443 of the Water Code. This
30 subdivision shall not apply to settlement agreements or consent
31 decrees.*

32 ~~(d)~~

33 (h) This section does not limit other remedies and protections
34 available under state or federal law.

35 ~~120053.~~

36 120052. ~~(a)~~—This article does not affect the process by which
37 voluntary agreements are entered into to assist in the
38 implementation of new water quality standards lawfully adopted
39 by the board.

1 (b) It is the intent of the Legislature that the process by which
2 voluntary agreements are entered into is separate and distinct from
3 law and regulations, including federal baseline standards, under
4 which the Central Valley Project and the State Water Project are
5 subject to the federal Endangered Species Act of 1973 (16 U.S.C.
6 Sec. 1531 et seq.) and the California Endangered Species Act
7 (Chapter 1.5 (commencing with Section 2050) of Division 3 of
8 the Fish and Game Code);

9
10 Article 3. Endangered and Threatened Species

11
12 120060. For purposes of this article, “baseline federal
13 standards” means the federal Endangered Species Act of 1973 (16
14 U.S.C. Sec. 1531 et seq.) in effect as of January 19, 2017, its
15 implementing regulations, and any incidental take permits,
16 incidental take statements, or biological opinions in effect as of
17 January 19, 2017, that were not otherwise permanently enjoined
18 by a federal court as of that date.

19 120061. Except as otherwise authorized by state law, the
20 following apply:

21 (a) To ensure no backsliding as a result of any change to the
22 baseline federal standards, the Fish and Game Commission shall
23 determine whether to list, in accordance with subdivision (b), a
24 species, subspecies, or distinct population segment under the
25 California Endangered Species Act (Chapter 1.5 (commencing
26 with Section 2050) of Division 3 of the Fish and Game Code) in
27 the event either of the following occurs:

28 (1) The federal delisting of the species, subspecies, or distinct
29 population segment that is eligible for protection under the
30 California Endangered Species Act and that is listed as endangered
31 or threatened pursuant to the federal Endangered Species Act of
32 1973 (16 U.S.C. Sec. 1531 et seq.) as of January 19, 2019.

33 (2) A change in the legally protected status of the species,
34 subspecies, or distinct population segment, including through a
35 change in listing from endangered to threatened, the adoption of
36 a rule pursuant to Section 4(d) of the federal Endangered Species
37 Act of 1973, or any amendment to the federal baseline standard.

38 (b) The Fish and Game Commission shall list the affected
39 species, subspecies, or distinct population segment identified in
40 subdivision (a), pursuant to subdivision (c) and without following

1 the regular listing process set forth in Article 2 (commencing with
2 Section 2070) of Chapter 1.5 of Division 3 of the Fish and Game
3 Code, no later than the conclusion of its second regularly scheduled
4 meeting or within three months, whichever is shorter, after the
5 occurrence of the event described in subdivision (a) unless either
6 the Fish and Game Commission determines that listing of the
7 species, subspecies, or distinct population segment is not warranted
8 because it does not meet the criteria in Chapter 1.5 (commencing
9 with Section 2050) of Division 3 of the Fish and Game Code or
10 its implementing regulations or the Department of Fish and
11 Wildlife recommends that the species, subspecies, or distinct
12 population segment undergo the regular listing process. If the
13 Department of Fish and Wildlife makes a recommendation that
14 the species, subspecies, or distinct population segment undergo
15 the regular listing process, the Fish and Game Commission shall
16 either accept the recommendation, in which event the Fish and
17 Game Commission shall be deemed to have accepted a petition
18 for listing the species, subspecies, or distinct population segment
19 pursuant to paragraph (2) of subdivision (c) of Section 2074.2 of
20 the Fish and Game Code, or reject the recommendation and
21 immediately list the species, subspecies, or distinct population
22 segment pursuant to this subdivision.

23 (e) Notwithstanding any other law or regulation, because a
24 decision by the Fish and Game Commission to list a species,
25 subspecies, or distinct population segment without following the
26 regular listing process becomes effective immediately, the Fish
27 and Game Commission shall add that species, subspecies, or
28 distinct population segment to the list of endangered or threatened
29 species, and the addition of that species, subspecies, or distinct
30 population segment to the list shall be deemed to be a change
31 without regulatory effect pursuant to paragraph (6) of subdivision
32 (a) of that section.

33 (d) (1) Upon the listing of any species, subspecies, or distinct
34 population segment under this section, the Fish and Game
35 Commission or the Department of Fish and Wildlife may authorize
36 the taking of such species, subspecies, or distinct population
37 segment as otherwise provided for in the Fish and Game Code. In
38 lieu of authorizing take under the provisions of Chapter 1.5
39 (commencing with Section 2050) of Division 3 of the Fish and
40 Game Code, the Fish and Game Commission or the Department

1 of Fish and Wildlife may adopt the terms and conditions of any
2 rule promulgated under Section 4(d) of the federal Endangered
3 Species Act of 1973, federal incidental take statement, incidental
4 take permit, or biological opinion in effect at the time of the event
5 described in subdivision (a).

6 (2) ~~The Department of Fish and Wildlife shall ensure that~~
7 ~~protections remain in place pursuant to regulation, incidental take~~
8 ~~permit, or consistency determination that are at least as protective~~
9 ~~of public health and safety, the environment, or natural resources~~
10 ~~as required by the baseline federal standards, as determined by the~~
11 ~~Department of Fish and Wildlife, and according to the best~~
12 ~~available science.~~

13 (3) ~~This subdivision does not prohibit the Department of Fish~~
14 ~~and Wildlife from establishing conditions that are more stringent~~
15 ~~than the baseline federal standards.~~

16 (e) ~~Any species, subspecies, or distinct population segment~~
17 ~~listed pursuant to this section shall be subject to the provisions in~~
18 ~~the California Endangered Species Act in the same manner as any~~
19 ~~other listed species, subspecies, or distinct population segment,~~
20 ~~including those provisions related to a change in listing status or~~
21 ~~delisting.~~

22 (f) ~~For those species, subspecies, or distinct population segment~~
23 ~~that the Fish and Game Commission lists pursuant to subdivision~~
24 ~~(b), or actions taken pursuant to subdivision (d) to ensure that~~
25 ~~protections remain in place that are at least as protective as baseline~~
26 ~~federal standards, the California Environmental Quality Act~~
27 ~~(Division 13 (commencing with Section 21000) of the Public~~
28 ~~Resources Code) shall not apply.~~

29 (g) ~~The provisions of the California Endangered Species Act~~
30 ~~are measures “relating to the control, appropriation, use, or~~
31 ~~distribution of water” within the meaning of Section 8 of the federal~~
32 ~~Reclamation Act of 1902 (43 U.S.C. Sec. 383) and shall apply to~~
33 ~~the United States Bureau of Reclamation’s operation of the federal~~
34 ~~Central Valley Project.~~

35
36 Article 4.3. Worker Health and Safety

37
38 120070. For purposes of this article, the following definitions
39 apply:

1 (a) “Baseline federal standards” means federal standards in
2 effect as of January 19, 2017, that were not otherwise permanently
3 enjoined by a federal court as of that date.

4 (b) “Board” means the Occupational Safety and Health
5 Standards Board.

6 (c) “Department” means the Department of Industrial Relations.

7 (d) “Federal standards” means health and safety standards set
8 forth in the federal Fair Labor Standards Act of 1938, as amended
9 (29 U.S.C. Sec. 201 et seq.), the federal Occupational Safety and
10 Health Act of 1970, as amended (29 U.S.C. Sec. 651 et seq.), the
11 Federal Coal Mine Health and Safety Act of 1969, as amended
12 (30 U.S.C. Sec. 801 et seq.), or in regulations and guidelines
13 established pursuant to those federal statutes.

14 (e) “State analogue statute” means the Labor Code, including
15 the California Occupational Safety and Health Act of 1973
16 (Division 5 (commencing with Section 6300) of the Labor Code).

17 120071. Except as otherwise authorized by state law, all of the
18 following apply:

19 (a) The board and the department shall ~~regularly~~ assess proposed
20 and final changes *made after January 19, 2017*, to the federal
21 standards.

22 (b) (1) At least quarterly, the board and the department shall
23 publish on their internet websites and in the California Regulatory
24 Notice Register a list of changes made to the federal standards and
25 provide an assessment on whether a change made to the federal
26 standards is more or less protective of worker health and safety
27 than the baseline federal standards.

28 (2) If the board or the department, as appropriate, determines
29 that a change to the federal standards is less protective of worker
30 health and safety than the baseline federal standards, the board *or*
31 *the department, as appropriate, shall assess whether current*
32 *corresponding state standards are at least as protective as the*
33 *baseline federal standards. If the current corresponding state*
34 *standards are not at least as protective as the baseline federal*
35 *standards, the board or department, as appropriate, shall consider*
36 *whether it should adopt the baseline federal standards as a measure*
37 *in order to* ~~maintain~~ *ensure that the state’s protections to be are*
38 *at least as stringent as the baseline federal standards.*

1 (3) The board and the department shall publish its list,
2 assessment, and consideration for adoption at least 30 days before
3 a vote on adoption on its internet website for public comment.

4 (c) If the board or the department, as appropriate, decides to
5 adopt a measure pursuant to subdivision (b), the board or the
6 department shall adopt the measure by either of the following:

7 (1) An emergency regulation in accordance with Section 120030.

8 (2) A promulgation or amendment of a state policy, plan, or
9 regulation.

10 (d) Notwithstanding any other law, the board or department, as
11 appropriate, when adopting a measure under subdivision (c) may
12 adopt those measures in accordance with Section 100 of Title 1 of
13 the California Code of Regulations, and the measures shall be
14 deemed to be a change without regulatory effect pursuant to
15 paragraph (6) of subdivision (a) of that section and not subject to
16 additional notice, procedural, or other considerations contained in
17 state analogue statutes, as long as the measure adopts the baseline
18 federal ~~standard~~ standards without substantial modification.

19 (e) This article does not prohibit the board or the department
20 from establishing rules and regulations for California that are more
21 stringent than the baseline federal standards.

22
23 DIVISION 3. MISCELLANEOUS
24

25 120100. The provisions of this title are severable. If any
26 provision of this title or its application is held invalid, that
27 invalidity shall not affect other provisions or applications that can
28 be given effect without the invalid provision or application.

29 120102. (a) This title shall become inoperative on January 20,
30 2025, and, as of January 1, 2026, is repealed.

31 (b) Notwithstanding subdivision (a), any action brought pursuant
32 to this title on or before January 20, 2025, may proceed to a final
33 judgment.

34 *SEC. 5. Section 116365.04 is added to the Health and Safety*
35 *Code, to read:*

36 *116365.04. (a) This section applies to a national primary*
37 *drinking water standard adopted by the United States*
38 *Environmental Protection Agency and is in effect on January 19,*
39 *2017, except where the United States Environmental Protection*
40 *Agency adopts a more stringent standard after January 19, 2017.*

1 (b) (1) *On or before June 30, 2020, the state board shall adopt*
2 *a primary drinking water standard at least as stringent as the*
3 *national primary drinking water standard that was in effect on*
4 *January 19, 2017.*

5 (2) *If the state’s primary drinking water standard is not*
6 *materially different in substance and effect than the requirements*
7 *of the national primary drinking water standard that was in effect*
8 *on January 19, 2017, the state board may adopt the primary*
9 *drinking water standard pursuant to subdivision (a) as an*
10 *emergency regulation, even if the national standard has been*
11 *repealed or replaced by a less stringent standard. The adoption*
12 *of a regulation pursuant to this paragraph is an emergency and*
13 *shall be considered by the Office of Administrative Law as*
14 *necessary for the immediate preservation of the public peace,*
15 *health, safety, and general welfare. Notwithstanding Chapter 3.5*
16 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
17 *2 of the Government Code, an emergency regulation adopted by*
18 *the state board pursuant to this section is not subject to review by*
19 *the Office of Administrative Law and shall remain in effect until*
20 *revised by the state board. Notwithstanding Section 15300.2 of*
21 *Title 14 of the California Code of Regulations, actions of the state*
22 *board under this paragraph shall be deemed to be within Section*
23 *15308 of Title 14 of the California Code of Regulations, provided*
24 *that those actions do not involve relaxation of primary drinking*
25 *water standards in effect under this chapter.*

26 (c) *This section is not a limitation on the authority of the state*
27 *board to do either of the following:*

28 (1) *To adopt a primary drinking water standard that maintains*
29 *or provides greater protection of the health of persons than*
30 *provided by a national primary drinking water standard that was*
31 *in effect on January 19, 2017.*

32 (2) *To adopt a regulation under subdivision (j) of section 116365*
33 *in lieu of establishing a maximum contaminant level.*

34 (d) *This section shall become inoperative on January 20, 2025,*
35 *and, as of January 1, 2026, is repealed.*

36 SEC. 6. *Section 13050 of the Water Code is amended to read:*
37 *13050. As used in this division:*

38 (a) *“State board” means the State Water Resources Control*
39 *Board.*

1 (b) “Regional board” means any California regional water
2 quality control board for a region as specified in Section 13200.

3 (c) “Person” includes any city, county, district, the state, and
4 the United States, to the extent authorized by federal law.

5 (d) (1) “Waste” includes sewage and any and all other
6 *pollutants, dredged or fill materials, or waste substances, liquid,*
7 *solid, gaseous, or radioactive, associated with human habitation,*
8 *or of human or animal origin, or from any producing,*
9 *manufacturing, or processing operation, including waste placed*
10 *within containers of whatever nature prior to, and for purposes of,*
11 *disposal.*

12 (2) *The amendments made to paragraph (1) by Senate Bill 1 of*
13 *the 2019–20 Regular Session do not constitute a change in, but*
14 *are declaratory of, existing law.*

15 (e) (1) “Waters of the state” means any surface water or
16 groundwater, including saline waters, within the boundaries of the
17 state. “Waters of the state” includes, but is not limited to, all waters
18 that meet any current or historic definition of “water of the United
19 States” promulgated by the United States Environmental Protection
20 Agency or the United States Army Corps of Engineers to implement
21 the Federal Water Pollution Control Act of 1972 (33 U.S.C. Sec.
22 1251 et seq.), as amended.

23 (2) *The amendments made to paragraph (1) by Senate Bill 1 of*
24 *the 2019–20 Regular Session do not constitute a change in, but*
25 *are declaratory of, existing law.*

26 (f) “Beneficial uses” of the waters of the state that may be
27 protected against quality degradation include, but are not limited
28 to, domestic, municipal, agricultural and industrial supply; power
29 generation; recreation; aesthetic enjoyment; navigation; and
30 preservation and enhancement of fish, wildlife, and other aquatic
31 resources or preserves.

32 (g) “Quality of the water” refers to chemical, physical,
33 biological, bacteriological, radiological, and other properties and
34 characteristics of water ~~which~~ that affect its use.

35 (h) “Water quality objectives” means the limits or levels of
36 water quality constituents or characteristics ~~which~~ that are
37 established for the reasonable protection of beneficial uses of water
38 or the prevention of nuisance within a specific area.

39 (i) “Water quality control” means the regulation of any activity
40 or factor ~~which~~ that may affect the quality of the waters of the

1 state and includes the prevention and correction of water pollution
2 and nuisance.

3 (j) “Water quality control plan” consists of a designation or
4 establishment for the waters within a specified area of all of the
5 following:

6 (1) Beneficial uses to be protected.

7 (2) Water quality objectives.

8 (3) A program of implementation needed for achieving water
9 quality objectives.

10 (k) “Contamination” means an impairment of the quality of the
11 waters of the state by waste to a degree ~~which~~ *that* creates a hazard
12 to the public health through poisoning or through the spread of
13 disease. “Contamination” includes any equivalent effect resulting
14 from the disposal of waste, whether or not waters of the state are
15 affected.

16 (l) (1) “Pollution” means an alteration of the quality of the
17 waters of the state by waste to a degree ~~which~~ *that* unreasonably
18 affects either of the following:

19 (A) The waters for beneficial uses.

20 (B) Facilities ~~which~~ *that* serve these beneficial uses.

21 (2) “Pollution” may include “contamination.”

22 (m) “Nuisance” means anything ~~which~~ *that* meets all of the
23 following requirements:

24 (1) Is injurious to health, or is indecent or offensive to the senses,
25 or an obstruction to the free use of property, so as to interfere with
26 the comfortable enjoyment of life or property.

27 (2) Affects at the same time an entire community or
28 neighborhood, or any considerable number of persons, although
29 the extent of the annoyance or damage inflicted upon individuals
30 may be unequal.

31 (3) Occurs during, or as a result of, the treatment or disposal of
32 wastes.

33 (n) “Recycled water” means water ~~which~~, *that*, as a result of
34 treatment of waste, is suitable for a direct beneficial use or a
35 controlled use that would not otherwise occur and is ~~therefor~~
36 *therefore* considered a valuable resource.

37 (o) “Citizen or domiciliary” of the state includes a foreign
38 corporation having substantial business contacts in the state or
39 ~~which~~ *that* is subject to service of process in this state.

40 (p) (1) “Hazardous substance” means either of the following:

1 (A) For discharge to surface waters, any substance determined
2 to be a hazardous substance pursuant to Section 311(b)(2) of the
3 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

4 (B) For discharge to groundwater, any substance listed as a
5 hazardous waste or hazardous material pursuant to Section 25140
6 of the Health and Safety Code, without regard to whether the
7 substance is intended to be used, reused, or discarded, except that
8 “hazardous substance” does not include any substance excluded
9 from Section 311(b)(2) of the Federal Water Pollution Control Act
10 because it is within the scope of Section 311(a)(1) of that act.

11 (2) “Hazardous substance” does not include any of the
12 following:

13 (A) Nontoxic, nonflammable, and noncorrosive stormwater
14 runoff drained from underground vaults, chambers, or manholes
15 into gutters or storm sewers.

16 (B) Any pesticide ~~which~~ *that* is applied for agricultural purposes
17 or is applied in accordance with a cooperative agreement authorized
18 by Section 116180 of the Health and Safety Code, and is not
19 discharged accidentally or for purposes of disposal, the application
20 of which is in compliance with all applicable state and federal laws
21 and regulations.

22 (C) Any discharge to surface water of a quantity less than a
23 reportable quantity as determined by regulations issued pursuant
24 to Section 311(b)(4) of the Federal Water Pollution Control Act.

25 (D) Any discharge to land ~~which~~ *that* results, or probably will
26 result, in a discharge to groundwater if the amount of the discharge
27 to land is less than a reportable quantity, as determined by
28 regulations adopted pursuant to Section 13271, for substances
29 listed as hazardous pursuant to Section 25140 of the Health and
30 Safety Code. No discharge shall be deemed a discharge of a
31 reportable quantity until regulations set a reportable quantity for
32 the substance discharged.

33 (q) (1) “Mining waste” means all solid, semisolid, and liquid
34 waste materials from the extraction, beneficiation, and processing
35 of ores and minerals. Mining waste includes, but is not limited to,
36 soil, waste rock, and overburden, as defined in Section 2732 of
37 the Public Resources Code, and tailings, slag, and other processed
38 waste materials, including cementitious materials that are managed
39 at the cement manufacturing facility where the materials were
40 generated.

1 (2) For the purposes of this subdivision, “cementitious material”
 2 means cement, cement kiln dust, clinker, and clinker dust.

3 (r) “Master recycling permit” means a permit issued to a supplier
 4 or a distributor, or both, of recycled water, that includes waste
 5 discharge requirements prescribed pursuant to Section 13263 and
 6 water recycling requirements prescribed pursuant to Section
 7 13523.1.

8 *SEC. 7. Section 13250 is added to the Water Code, to read:*

9 *13250. (a) Except as provided in subdivision (b), regulations*
 10 *adopted by the United States Environmental Protection Agency*
 11 *setting water quality standards or policies for implementation of*
 12 *those standards for waters within the external boundaries of the*
 13 *state and in effect on January 19, 2017, shall have the same effect*
 14 *as provisions of water quality control plans under this division.*

15 *(b) This section does not apply if either of the following*
 16 *situations occur:*

17 *(1) A regulation adopted by the United States Environmental*
 18 *Protection Agency after January 19, 2017, sets a more stringent*
 19 *standard or requirement.*

20 *(2) A water quality control plan, state policy for water quality*
 21 *control, or plan or plan amendment, adopted or approved after*
 22 *the federal regulation, sets a beneficial use, water quality objective,*
 23 *or implementation policy to replace the federal regulation.*

24 *(c) This section shall become inoperative on January 20, 2025,*
 25 *and, as of January 1, 2026, is repealed.*

26 *SEC. 8. Section 13265 of the Water Code is amended to read:*

27 *13265. (a) (1) Any person discharging waste in violation of*
 28 *Section 13264, after such violation has been called to his the*
 29 *person’s attention in writing by the regional board, is guilty of a*
 30 *misdemeanor and may be liable civilly in accordance with*
 31 *subdivision (b). misdemeanor. Each day of such discharge shall*
 32 *constitute a separate offense.*

33 *(b) (1) Any person discharging waste in violation of Section*
 34 *13264 may be civilly liable in accordance with this subdivision.*

35 ~~(b) (1)~~

36 *(2) Civil liability may be administratively imposed by a regional*
 37 *board in accordance with Article 2.5 (commencing with Section*
 38 *13323) of Chapter 5 for a violation of subdivision (a) in an amount*
 39 *which that shall not exceed one thousand dollars (\$1,000) for each*
 40 *day in which the violation occurs.*

1 ~~(2)~~

2 (3) Civil liability may be imposed by the superior court in
3 accordance with Articles 5 (commencing with Section 13350) and
4 6 (commencing with Section 13360) of Chapter 5 for a violation
5 of subdivision (a) in an amount ~~which~~ *that* shall not exceed five
6 thousand dollars (\$5,000) for each day in which the violation
7 occurs.

8 (c) (1) Any person discharging hazardous waste, as defined in
9 Section 25117 of the Health and Safety Code, in violation of
10 Section 13264 is guilty of a misdemeanor and may be liable civilly
11 in accordance with subdivision (d). That liability shall not be
12 imposed if the discharger is not negligent and immediately files a
13 report of the discharge with the board, or if the regional board
14 determines that the violation of Section 13264 was insubstantial.

15 ~~This~~

16 (2) ~~This~~ subdivision shall not be applicable to any waste
17 discharge ~~which~~ *that* is subject to Chapter 5.5 (commencing with
18 Section 13370).

19 (d) (1) Civil liability may be administratively imposed by a
20 regional board in accordance with Article 2.5 (commencing with
21 Section 13323) of Chapter 5 for a violation of subdivision (c) in
22 an amount ~~which~~ *that* shall not exceed five thousand dollars
23 (\$5,000) for each day in which the violation occurs.

24 (2) Civil liability may be imposed by the superior court in
25 accordance with ~~Articles~~ *Article* 5 (commencing with Section
26 13350) and *Article* 6 (commencing with Section 13360) of Chapter
27 5 for a violation of subdivision (c) in an amount ~~which~~ *that* shall
28 not exceed twenty-five thousand dollars (\$25,000) for each day in
29 which the violation occurs.

30 *SEC. 9. Section 13350 of the Water Code is amended to read:*

31 13350. (a) A person who (1) violates a cease and desist ~~order~~
32 ~~or order~~, cleanup and abatement ~~order hereafter issued, reissued,~~
33 ~~or amended by a regional board or the state board, or (2) in~~
34 ~~violation of a order~~, waste discharge requirement, waiver condition,
35 certification, or other order or prohibition issued, reissued, or
36 amended by a regional board or the state board, ~~discharges waste,~~
37 ~~or causes or permits waste to be deposited where it is discharged,~~
38 ~~into the waters of the state, or (3) (2) causes or permits any oil or~~
39 any residuary product of petroleum to be deposited in or on any
40 of the waters of the state, except in accordance with waste

1 discharge requirements or other actions or provisions of this
2 division, shall be liable civilly, and remedies may be proposed, in
3 accordance with subdivision (d) or (e).

4 (b) (1) A person who, without regard to intent or negligence,
5 causes or permits a hazardous substance to be discharged in or on
6 any of the waters of the state, except in accordance with waste
7 discharge requirements or other provisions of this division, shall
8 be strictly liable civilly in accordance with subdivision (d) or (e).

9 (2) For purposes of this subdivision, the term “discharge”
10 includes only those discharges for which Section 13260 directs
11 that a report of waste discharge shall be filed with the regional
12 board.

13 (3) For purposes of this subdivision, the term “discharge” does
14 not include an emission excluded from the applicability of Section
15 311 of the *federal* Clean Water Act (33 U.S.C. Sec. 1321) pursuant
16 to *United States* Environmental Protection Agency regulations
17 interpreting Section 311(a)(2) of the *federal* Clean Water Act (33
18 U.S.C. Sec. 1321(a)(2)).

19 (c) A person shall not be liable under subdivision (b) if the
20 discharge is caused solely by any one or combination of the
21 following:

22 (1) An act of war.

23 (2) An unanticipated grave natural disaster or other natural
24 phenomenon of an exceptional, inevitable, and irresistible
25 character, the effects of which could not have been prevented or
26 avoided by the exercise of due care or foresight.

27 (3) Negligence on the part of the state, the United States, or any
28 department or agency thereof. However, this paragraph shall not
29 be interpreted to provide the state, the United States, or any
30 department or agency thereof a defense to liability for any
31 discharge caused by its own negligence.

32 (4) An intentional act of a third party, the effects of which could
33 not have been prevented or avoided by the exercise of due care or
34 foresight.

35 (5) Any other circumstance or event that causes the discharge
36 despite the exercise of every reasonable precaution to prevent or
37 mitigate the discharge.

38 (d) The court may impose civil liability either on a daily basis
39 or on a per gallon basis, but not on both.

1 (1) The civil liability on a daily basis shall not exceed fifteen
2 thousand dollars (\$15,000) for each day the violation occurs.

3 (2) The civil liability on a per gallon basis shall not exceed
4 twenty dollars (\$20) for each gallon of waste discharged.

5 (e) The state board or a regional board may impose civil liability
6 administratively pursuant to Article 2.5 (commencing with Section
7 13323) of Chapter 5 either on a daily basis or on a per gallon basis,
8 but not on both.

9 (1) The civil liability on a daily basis shall not exceed five
10 thousand dollars (\$5,000) for each day the violation occurs.

11 (A) When there is a discharge, and a cleanup and abatement
12 order is issued, except as provided in subdivision (f), the civil
13 liability shall not be less than five hundred dollars (\$500) for each
14 day in which the discharge occurs and for each day the cleanup
15 and abatement order is violated.

16 (B) When there is no discharge, but ~~an~~ a *cease and desist order*
17 *or cleanup and abatement* order issued by the regional board is
18 violated, except as provided in subdivision (f), the civil liability
19 shall not be less than one hundred dollars (\$100) for each day in
20 which the violation occurs.

21 (2) The civil liability on a per gallon basis shall not exceed ten
22 dollars (\$10) for each gallon of waste discharged.

23 (f) A regional board shall not administratively impose civil
24 liability in accordance with paragraph (1) of subdivision (e) in an
25 amount less than the minimum amount specified, unless the
26 regional board makes express findings setting forth the reasons
27 for its action based upon the specific factors required to be
28 considered pursuant to Section 13327.

29 (g) The Attorney General, upon request of a regional board or
30 the state board, shall petition the superior court to impose, assess,
31 and recover the sums. Except in the case of a violation of a cease
32 and desist order, a regional board or the state board shall make the
33 request only after a hearing, with due notice of the hearing given
34 to all affected persons. In determining the amount to be imposed,
35 assessed, or recovered, the court shall be subject to Section 13351.

36 (h) Article 3 (commencing with Section 13330) and Article 6
37 (commencing with Section 13360) apply to proceedings to impose,
38 assess, and recover an amount pursuant to this article.

39 (i) A person who incurs any liability established under this
40 section shall be entitled to contribution for that liability from a

1 third party, in an action in the superior court and upon proof that
2 the discharge was caused in whole or in part by an act or omission
3 of the third party, to the extent that the discharge is caused by the
4 act or omission of the third party, in accordance with the principles
5 of comparative fault.

6 (j) Remedies under this section are in addition to, and do not
7 supersede or limit, any and all other remedies, civil or criminal,
8 except that no liability shall be recoverable under subdivision (a)
9 for a violation for which liability is recovered under Section 13268
10 or under subdivision (b) for any discharge for which liability is
11 recovered under Section 13385.

12 (k) Notwithstanding any other law, all funds generated by the
13 imposition of liabilities pursuant to this section shall be deposited
14 into the Waste Discharge Permit Fund. These moneys shall be
15 separately accounted for, and shall be expended by the state board,
16 upon appropriation by the Legislature, to assist regional boards,
17 and other public agencies with authority to clean up waste or abate
18 the effects of the waste, in cleaning up or abating the effects of the
19 waste on waters of the state, or for the purposes authorized in
20 Section 13443, or to assist in implementing Chapter 7.3
21 (commencing with Section 13560).

22 ~~(l) This section shall become operative on July 1, 2017.~~

23 *SEC. 10. Section 13377.1 is added to the Water Code, to read:*
24 *13377.1. (a) (1) Except as provided in paragraph (2) or (3),*
25 *if a requirement of Section 1312, 1316, 1317, 1343, or 1344 of*
26 *Title 33 of the United States Code, as amended, or federal*
27 *regulations implementing those sections, in effect on January 19,*
28 *2017, but no longer in effect, sets a more stringent requirement*
29 *than is required under Section 13377, waste discharge*
30 *requirements or dredged or fill material permits under this chapter*
31 *shall apply and ensure compliance with that more stringent*
32 *requirement.*

33 *(2) Paragraph (1) does not apply where the state board or a*
34 *regional board determines that the more stringent requirement*
35 *has been replaced by other state or federal requirements that*
36 *provide comparable or greater protection of water quality.*

37 *(3) Paragraph (1) does not apply if the state board or a regional*
38 *board determines both of the following:*

39 *(A) Requiring compliance with the more stringent requirement*
40 *is not required under the antibacksliding requirements of Section*

1 1342(o) of Title 33 of the United States Code, as amended, and
 2 Section 122.44(l) of Title 40 of the Code of Federal Regulations
 3 as those provisions were in effect on January 17, 2017, or the
 4 antidegradation provisions of Section 131.12 of Title 40 of the
 5 Code of Federal Regulations as that section was in effect on
 6 January 17, 2017.

7 (B) Requiring compliance with the more stringent requirement
 8 would have unreasonable adverse environmental impacts or, for
 9 a requirement other than for a toxic pollutant under Section 1312,
 10 1317(a), or 1317(b)(1) of Title 33 of the United States Code, as
 11 amended, requiring compliance would impose costs that are wholly
 12 disproportionate with the benefits to water quality.

13 (b) This section shall become inoperative on January 20, 2025,
 14 and, as of January 1, 2026, is repealed.

15 SEC. 11. The provisions of this measure are severable. If any
 16 provision of this measure or its application is held invalid, that
 17 invalidity shall not affect other provisions or applications that can
 18 be given effect without the invalid provision or application.

19 ~~SEC. 3.~~

20 SEC. 12. No reimbursement is required by this act pursuant to
 21 Section 6 of Article XIII B of the California Constitution because
 22 a local agency or school district has the authority to levy service
 23 charges, fees, or assessments sufficient to pay for the program or
 24 level of service mandated by certain mandates in this act or because
 25 costs that may be incurred by a local agency or school district will
 26 be incurred because this act creates a new crime or infraction,
 27 eliminates a crime or infraction, or changes the penalty for a crime
 28 or infraction, within the meaning of Section 17556 of the
 29 Government Code.

30 However, if the Commission on State Mandates determines that
 31 this act contains other costs mandated by the state, reimbursement
 32 to local agencies and school districts for those costs shall be made
 33 pursuant to Part 7 (commencing with Section 17500) of Division
 34 4 of Title 2 of the Government Code.