

## Assembly Bill No. 946

### CHAPTER 315

An act to amend Sections 1055, 1055.2, 1122, 1126, 1211, and 1704 of, and to add Sections 1701.1, 1701.2, 1701.3, 1701.4, 1703.1, 1703.2, 1703.3, 1703.4, 1703.5, and 1703.6 to, the Water Code, relating to water.

[Approved by Governor September 19, 2001. Filed with Secretary of State September 20, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 946, Kelley. Water rights.

(1) Existing law specifies procedures under which a person may be subject to administrative civil liability for unauthorized diversion or use of water. Existing law specifies procedures under which the State Water Resources Board may order a reconsideration of any of its decisions or orders on the filing of a petition for writ of mandate by any interested person.

This bill would expand these procedures to apply to any person or entity.

(2) Existing law authorizes any party aggrieved by any decision or order of the board to file a petition for a writ of mandate in accordance with specified provisions and, in this connection, provides that unless reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board, that the right to petition is not affected by the failure to seek reconsideration before the board. Existing law provides that, except as otherwise provided, prescribed provisions of the Code of Civil Procedure govern the judicial proceedings and requires the court to exercise independent judgment on the evidence in specified cases relating to the appropriation of water.

This bill would provide that, except in cases where the decision or order is issued under that delegated authority, reconsideration is not required to be exhausted before filing a petition for writ of mandate.

(3) Existing law requires that the time for filing the petition for a writ of mandate described in (2) above be extended for any person who seeks reconsideration of the decision or order of the board.

Existing law, the California Environmental Quality Act (CEQA), requires that any action or proceeding to challenge certain acts or decisions of a public agency on the grounds of noncompliance with the act be commenced within certain time limits.

This bill would require that the time for filing any of these CEQA actions or proceedings against the board be extended for any person who seeks reconsideration of any decision or order of the board. The bill would provide that the amendment made by this bill, with respect to this provision, does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the owner of any wastewater treatment plant to obtain approval of the board for any change in the point of discharge, place of use, or purpose of use of treated wastewater.

This bill would provide that this requirement does not apply to changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse.

(5) Existing law authorizes an applicant to appropriate water, or a permittee or licensee, to petition to change the point of diversion, place of use, or purpose of water from that described in the application, permit, or license, as applicable.

This bill would require a petition for change filed in connection with an application, permit, or license, to include prescribed information and would authorize the board to request additional information regarding the petition, as specified. The bill would authorize any interested person to file with the board a written protest against the approval of the petition and would impose requirements in connection with the filing of that protest. The bill would authorize the board to request additional information regarding the protest, as prescribed. The bill would authorize the board to cancel a protest or petition for failure to provide information requested by the board in accordance with specified provisions.

The bill would authorize the board, after holding a hearing, to approve with conditions or deny a petition. The bill would authorize the board, under certain circumstances, to approve or deny a petition without holding a hearing.

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

SECTION 1. Section 1055 of the Water Code is amended to read:

1055. (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052 or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party served that the party may request a hearing not



later than 20 days from the date the party was served. The hearing shall be before a member of the board as it may specify.

(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking any additional evidence as may be necessary that could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.

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

SEC. 2. Section 1055.2 of the Water Code is amended to read:

1055.2. No person or entity shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under subdivision (d) of Section 1052 for the same act or failure to act.

SEC. 3. Section 1122 of the Water Code is amended to read:

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

SEC. 4. Section 1126 of the Water Code is amended to read:

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

(b) Any party aggrieved by any decision or order may, not later than 30 days from the date of final action by the board, file a petition for a writ of mandate for review of the decision or order. Except in cases where the decision or order is issued under authority delegated to an officer or employee of the board, reconsideration before the board is not an administrative remedy that is required to be exhausted before filing a petition for writ of mandate. The time for filing the petition for writ of mandate and the time for filing an action or proceeding in which the board is a respondent under Section 21167 of the Public Resources Code



shall be extended for any person who seeks reconsideration by the board pursuant to this article. The amendment of this subdivision made during the 2001 portion of the 2001–02 Regular Session does not constitute a change in, but is declaratory of, existing law.

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

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

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

SEC. 5. Section 1211 of the Water Code is amended to read:

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

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

SEC. 6. Section 1701.1 is added to the Water Code, to read:

1701.1. A petition for change filed after notice of an application shall meet all of the following requirements:

(a) State the name and address of the petitioner.

(b) Be signed by the petitioner, or the petitioner's agent or attorney.

(c) Set forth amendments to the application or an amended application reflecting the proposed change, including any information necessary for the amended application to comply with Section 1260.

(d) Include sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water.



(e) Contain other appropriate information and be in the form required by applicable regulations.

SEC. 7. Section 1701.2 is added to the Water Code, to read:

1701.2. A petition for change in a permit or license shall meet all of the following requirements:

(a) State the name and address of the petitioner.

(b) Be signed by the petitioner, or the petitioner's agent or attorney.

(c) Include all information reasonably available to the petitioner, or that can be obtained from the Department of Fish and Game, concerning the extent, if any, to which fish and wildlife would be affected by the change, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the change.

(d) Include sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water.

(e) Contain other appropriate information and be in the form required by applicable regulations.

SEC. 8. Section 1701.3 is added to the Water Code, to read:

1701.3. (a) After a petition is filed, the board may request additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under this article. The board shall provide a reasonable period for submitting the information.

(b) The additional information may include, but need not be limited to, any of the following:

(1) Information needed to demonstrate that the change will not injure any other legal user of water.

(2) Information needed to demonstrate that the change will comply with any applicable requirements of the Fish and Game Code or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

(3) Information needed to comply with Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 9. Section 1701.4 is added to the Water Code, to read:

1701.4. If, within the period provided, the petitioner does not provide the information requested pursuant to Section 1701.3, the board shall cancel the petition, unless, for good cause shown, the board allows additional time to submit the requested information.

SEC. 10. Section 1703.1 is added to the Water Code, to read:

1703.1. Any interested person, within the time allowed in the notice of petition, or within the time the board may allow for good cause shown, may file with the board a written protest against approval of the petition.

SEC. 11. Section 1703.2 is added to the Water Code, to read:

1703.2. The protest shall meet all of the following requirements:



- (a) State the name and address of the protestant.
- (b) Be signed by the protestant, or the protestant's agent or attorney.
- (c) Clearly and specifically set forth the protestant's objections to the approval of the petition, and state the bases for these objections.
- (d) Contain other appropriate information and be in the form required by applicable regulations.
- (e) Be served on the petitioner by the protestant by mailing a duplicate copy of the protest to the petitioner or through service undertaken in another manner determined to be adequate by the board.

SEC. 12. Section 1703.3 is added to the Water Code, to read:

1703.3. The board may request from the protestant additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted pursuant to Section 1703.2. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

SEC. 13. Section 1703.4 is added to the Water Code, to read:

1703.4. The protestant and the petitioner shall make a good faith effort to resolve the protest not later than 180 days from the date the period provided pursuant to Section 1703.1 expires. For good cause, the board may allow additional time for the protestant and the petitioner to attempt to resolve the protest.

SEC. 14. Section 1703.5 is added to the Water Code, to read:

1703.5. The board may request from the protestant or the petitioner additional information that the board determines is reasonably necessary to attempt to resolve the protest. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

SEC. 15. Section 1703.6 is added to the Water Code, to read:

1703.6. (a) The board may cancel a protest or petition for failure to provide information requested by the board under this article within the period provided.

(b) Except as provided in subdivisions (c) and (d), the board may not cancel a protest for failure to submit information not in the possession or under the control of the protestant if the protest meets the requirements of Section 1703.2 and the petitioner is or could be required to submit the information under Section 1701.1, 1701.2, and 1701.3.

(c) If a protest is based on injury to a legal user of water, the board may cancel the protest if the protestant fails to submit any of the following information requested by the board:

(1) Information that the protestant is required to submit to the board to comply with Part 5.1 (commencing with Section 5100) during any period after the protest is filed.



(2) Information that is reasonably necessary to determine if the protestant has a valid water right.

(3) Information concerning the protestant’s historical, current, or proposed future diversion and use of water that is reasonably necessary to determine if the proposed change will result in injury to the protestant’s exercise of its water right.

(d) If the protest is based on an allegation other than injury to a legal user of water, the board may cancel the protest for failure to submit information requested by the board if the board determines both of the following:

(1) The public review period has expired for any draft environmental document or negative declaration required to be circulated for public review and comment pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) In the absence of the requested information, there is no substantial evidence in light of the whole record to support the allegation.

(e) If a protest is subject to both subdivisions (c) and (d), the part of the protest subject to subdivision (c) may be canceled pursuant to subdivision (c) and the part of the protest subject to subdivision (d) may be canceled pursuant to subdivision (d).

SEC. 16. Section 1704 of the Water Code is amended to read:

1704. (a) The board, after a hearing, may approve with conditions, or deny, a petition.

(b) Notice of hearing shall be given by mailing the notice not less than 20 days before the date of hearing to the petitioner and to any protestant by registered mail.

(c) (1) The board may, but is not required to, hold a hearing prior to approving an unprotested petition.

(2) The board may, but is not required to, hold a hearing if the board determines that undisputed facts support the approval of the petition and there is no disputed issue of material fact.

(3) The board may, but is not required to, hold a hearing prior to denying a petition, if, after notice, the board determines that the petition is defective, the petition fails to provide information requested by the board, or undisputed facts support the denial of the petition and there is no disputed issue of material fact.

