

AMENDED IN SENATE APRIL 19, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 773

Introduced by Senator Cox

February 22, 2005

An act to amend Section 25159.24 of the Health and Safety Code, and to amend ~~Sections 13050 and 13267~~ *Section 13050* of, and to add Section 13228.5 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Cox. Groundwater aquifers: injection wells.

(1) The Toxic Injection Well Control Act of 1985 exempts from its provisions the use of injection wells for certain purposes.

This bill would also exempt any injection well used to inject drinking water, as defined.

(2) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of waste in accordance with the national pollutant discharge elimination system (NPDES) permit program under the Clean Water Act and the Porter-Cologne Water Quality Control Act.

This bill would exempt from the definition of "waste" drinking water, *as defined*, that is ~~percolated, injected, or otherwise conveyed~~ into storage in a groundwater aquifer for later recovery and use. ~~The bill would define "drinking water" for those purposes.~~

This bill would direct the state board and regional boards to encourage projects in which drinking water is injected, ~~percolated, or otherwise conveyed~~ into groundwater aquifers for later recovery and use by the public. The bill would require any person who proposes to inject, ~~percolate, or otherwise convey~~ drinking water into storage in a

groundwater aquifer to file a report, as prescribed, with the regional board in whose region the proposed injection, ~~percolation, or other conveyance~~ would occur. The bill would require the regional board to consider, and within 6 months of the date of filing of a report, to issue a final decision on, a project proposed in the report. The bill would require the regional board to approve the project if it determines the project to be consistent with the applicable water quality control plan. The bill would provide for state board review of a decision of the regional board pursuant to the bill.

The bill would authorize the state board or a regional board to require any person who injects, ~~percolates, or otherwise conveys into storage in a groundwater aquifer, drinking~~ water *into groundwater storage* for later recovery and use in accordance with the above-described provisions, to file ~~a~~ *an annual* report that demonstrates that any water so injected, ~~percolated, or otherwise conveyed~~ complies with the definition of “drinking water.” ~~The~~

The bill would exempt certain projects from its provisions.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) An innovative method of meeting California’s fluctuating
4 water supply needs is to store in groundwater aquifers, *by means*
5 *of injection*, water that ~~has been treated to a condition that is safe~~
6 ~~to drink~~. *the State Department of Health Services has permitted*
7 *for human consumption.*

8 (b) Most groundwater in California, to the extent that it is
9 used, is pumped and used for agricultural, domestic, industrial, or
10 municipal purposes.

11 ~~(c) If water is treated to levels that are safe for drinking, the~~
12 *(c) If water has been permitted by the State Department of*
13 *Health Services for human consumption, the storage of that water*
14 *in groundwater aquifers by injection will not adversely affect the*
15 *ability of those aquifers to support their current uses.*

16 (d) *Because of unique local conditions or previous*
17 *adjudications, many groundwater basins in this state have unique*
18 *management arrangements, but most basins do not.*

1 (e) In light of California’s need for innovative solutions to
2 meet water supply needs, it is the intent of the Legislature to
3 ~~encourage the state’s regulatory agencies to promote the storage~~
4 ~~of water treated to drinking water levels in groundwater aquifers~~
5 ~~for later pumping and use.~~*encourage the storage of water*
6 *permitted by the State Department of Health Services for human*
7 *consumption in groundwater aquifers by injection for later*
8 *pumping and use, and also to encourage the state’s regulatory*
9 *agencies to actively encourage those projects where local*
10 *management arrangements do not currently encourage them.*

11 SEC. 2. Section 25159.24 of the Health and Safety Code is
12 amended to read:

13 25159.24. (a) Any injection well used to inject contaminated
14 groundwater that has been treated and is being reinjected into the
15 same formation from which it was drawn for the purpose of
16 improving the quality of the groundwater in the formation is
17 exempt from this article if this method is part of a remedial
18 program initiated in response to an order, requirement, or other
19 action of a federal or state agency.

20 (b) Any injection well used for the reinjection of geothermal
21 resources, as defined in Section 6903 of the Public Resources
22 Code, is exempt from this article if the well is in compliance with
23 Chapter 4 (commencing with Section 3700) of Division 3 of the
24 Public Resources Code.

25 (c) Any injection well used to inject drinking water, as defined
26 in Section ~~13050~~ 13228.5 of the Water Code, is exempt from this
27 article.

28 SEC. 3. Section 13050 of the Water Code is amended to read:

29 13050. As used in this division:

30 (a) “State board” means the State Water Resources Control
31 Board.

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

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

36 (d) “Waste” includes sewage and any and all other waste
37 substances, liquid, solid, gaseous, or radioactive, associated with
38 human habitation, or of human or animal origin, or from any
39 producing, manufacturing, or processing operation, including
40 waste placed within containers of whatever nature prior to, and

1 for purposes of, disposal. “Waste” does not include drinking
2 ~~water that is percolated, injected, or otherwise conveyed~~
3 ~~into water, as defined in Section 13228.5, that is injected into~~
4 storage in a groundwater aquifer for later recovery and use.

5 (e) “Waters of the state” means any surface water or
6 groundwater, including saline waters, within the boundaries of
7 the state.

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

14 (g) “Quality of the water” refers to chemical, physical,
15 biological, bacteriological, radiological, and other properties and
16 characteristics of water which affect its use.

17 (h) “Water quality objectives” means the limits or levels of
18 water quality constituents or characteristics which are established
19 for the reasonable protection of beneficial uses of water or the
20 prevention of nuisance within a specific area.

21 (i) “Water quality control” means the regulation of any
22 activity or factor which may affect the quality of the waters of
23 the state and includes the prevention and correction of water
24 pollution and nuisance.

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

28 (1) Beneficial uses to be protected.

29 (2) Water quality objectives.

30 (3) A program of implementation needed for achieving water
31 quality objectives.

32 (k) “Contamination” means an impairment of the quality of
33 the waters of the state by waste to a degree which creates a
34 hazard to the public health through poisoning or through the
35 spread of disease. “Contamination” includes any equivalent
36 effect resulting from the disposal of waste, whether or not waters
37 of the state are affected.

38 (l) (1) “Pollution” means an alteration of the quality of the
39 waters of the state by waste to a degree which unreasonably
40 affects either of the following:

- 1 (A) The waters for beneficial uses.
- 2 (B) Facilities which serve these beneficial uses.
- 3 (2) “Pollution” may include “contamination.”
- 4 (m) “Nuisance” means anything which meets all of the
- 5 following requirements:
 - 6 (1) Is injurious to health, or is indecent or offensive to the
 - 7 senses, or an obstruction to the free use of property, so as to
 - 8 interfere with the comfortable enjoyment of life or property.
 - 9 (2) Affects at the same time an entire community or
 - 10 neighborhood, or any considerable number of persons, although
 - 11 the extent of the annoyance or damage inflicted upon individuals
 - 12 may be unequal.
 - 13 (3) Occurs during, or as a result of, the treatment or disposal of
 - 14 wastes.
 - 15 (n) “Recycled water” means water which, as a result of
 - 16 treatment of waste, is suitable for a direct beneficial use or a
 - 17 controlled use that would not otherwise occur and is therefore
 - 18 considered a valuable resource.
 - 19 (o) “Citizen or domiciliary” of the state includes a foreign
 - 20 corporation having substantial business contacts in the state or
 - 21 which is subject to service of process in this state.
 - 22 (p) (1) “Hazardous substance” means either of the following:
 - 23 (A) For discharge to surface waters, any substance determined
 - 24 to be a hazardous substance pursuant to Section 311(b)(2) of the
 - 25 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et
 - 26 seq.).
 - 27 (B) For discharge to groundwater, any substance listed as a
 - 28 hazardous waste or hazardous material pursuant to Section 25140
 - 29 of the Health and Safety Code, without regard to whether the
 - 30 substance is intended to be used, reused, or discarded, except that
 - 31 “hazardous substance” does not include any substance excluded
 - 32 from Section 311(b)(2) of the Federal Water Pollution Control
 - 33 Act because it is within the scope of Section 311(a)(1) of that act.
 - 34 (2) “Hazardous substance” does not include any of the
 - 35 following:
 - 36 (A) Nontoxic, nonflammable, and noncorrosive stormwater
 - 37 runoff drained from underground vaults, chambers, or manholes
 - 38 into gutters or storm sewers.
 - 39 (B) Any pesticide which is applied for agricultural purposes or
 - 40 is applied in accordance with a cooperative agreement authorized

1 by Section 116180 of the Health and Safety Code, and is not
2 discharged accidentally or for purposes of disposal, the
3 application of which is in compliance with all applicable state
4 and federal laws and regulations.

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

8 (D) Any discharge to land which results, or probably will
9 result, in a discharge to groundwater if the amount of the
10 discharge to land is less than a reportable quantity, as determined
11 by regulations adopted pursuant to Section 13271, for substances
12 listed as hazardous pursuant to Section 25140 of the Health and
13 Safety Code. No discharge shall be deemed a discharge of a
14 reportable quantity until regulations set a reportable quantity for
15 the substance discharged.

16 (q) (1) "Mining waste" means all solid, semisolid, and liquid
17 waste materials from the extraction, beneficiation, and processing
18 of ores and minerals. Mining waste includes, but is not limited to,
19 soil, waste rock, and overburden, as defined in Section 2732 of
20 the Public Resources Code, and tailings, slag, and other
21 processed waste materials, including cementitious materials that
22 are managed at the cement manufacturing facility where the
23 materials were generated.

24 (2) For the purposes of this subdivision, "cementitious
25 material" means cement, cement kiln dust, clinker, and clinker
26 dust.

27 (r) "Master recycling permit" means a permit issued to a
28 supplier or a distributor, or both, of recycled water, that includes
29 waste discharge requirements prescribed pursuant to Section
30 13263 and water recycling requirements prescribed pursuant to
31 Section 13523.1.

32 ~~(s) "Drinking water" means water that the State Department of
33 Health Services permits to be used for human consumption.~~

34 SEC. 4. Section 13228.5 is added to the Water Code, to read:

35 13228.5. (a) (1) The Legislature hereby finds and declares
36 that the growing water needs of this state require innovative
37 solutions to the problem of storing water when much water is
38 available for the later use by the public when less water is
39 available.

1 (2) In order to address this problem, the Legislature hereby
2 further finds and declares it to be the established policy of this
3 state to facilitate the use of groundwater aquifers to store water,
4 especially drinking water, *as defined in subdivision (k)*, for later
5 recovery and use.

6 (3) *It is the intent of the Legislature that this section be*
7 *construed liberally to promote the policy described in paragraph*
8 *(2).*

9 (4) In accordance with this policy, the Legislature hereby
10 directs the state board and regional boards to encourage projects
11 in which drinking water ~~is injected, percolated, or otherwise~~
12 ~~conveyed~~ *would be injected* into groundwater aquifers for later
13 recovery and use by the public.

14 (b) Any person who proposes to inject, ~~percolate, or otherwise~~
15 ~~convey~~ drinking water into storage in a groundwater aquifer shall
16 file with the regional board in whose region the proposed
17 injection, ~~percolation, or other conveyance~~ would occur a report
18 that includes all of the following:

19 (1) The location of the proposed injection, ~~percolation, or~~
20 ~~conveyance~~.

21 (2) A description of the aquifer or aquifers into which the
22 drinking water would be injected, ~~percolated, or otherwise~~
23 ~~conveyed~~.

24 (3) A statement of the amount of drinking water that the
25 person expects to inject, ~~percolate, or otherwise convey~~ into
26 groundwater storage annually.

27 (4) A description of the facilities that the person proposes to
28 use to inject, ~~percolate, or otherwise convey~~ *drinking water* into
29 groundwater storage ~~that drinking water~~.

30 (5) A description of how the person filing the report will
31 ~~ensure that the drinking water to be injected, percolated, or~~
32 ~~conveyed into groundwater storage will meet applicable drinking~~
33 ~~water standards at the time of injection.~~ *ensure that the drinking*
34 *water to be injected will meet the terms of the applicable permit*
35 *issued by the State Department of Health Services at the time of*
36 *injection.*

37 (6) A description of the facilities that the person intends to use
38 in recovering drinking water that it injects, ~~percolates, or~~
39 ~~otherwise conveys~~ into groundwater storage and the times and
40 rates at which that person intends for that recovery to occur.

1 (7) An analysis stamped by a registered engineer or
2 professional geologist that demonstrates ~~both of the following:~~

3 ~~(A) The person's injection, percolation, or conveyance of~~
4 ~~drinking water into groundwater storage, and subsequent~~
5 ~~recovery of that drinking water, will not cause changes to~~
6 ~~groundwater levels in the affected aquifers that would injure~~
7 ~~other users of that groundwater.~~

8 ~~(B) The proposed injection, percolation, or conveyance of~~
9 ~~drinking water into groundwater storage, and subsequent~~
10 ~~recovery of that drinking water, is consistent with the applicable~~
11 ~~water quality control plan.~~

12 *that the proposed injection and recovery of drinking water will*
13 *satisfy subdivision (c).*

14 (c) The regional board shall consider, and within six months of
15 the date of filing of a report filed under subdivision (b), shall
16 issue a final decision on a project proposed in the report. The
17 regional board shall approve the project if it determines the
18 project to be consistent with the applicable water quality control
19 plan. In considering the project, the regional board shall ~~not~~
20 ~~determine drinking water to be toxic, detrimental to human~~
21 ~~health, or detrimental to the agricultural water supply. The~~
22 *consider drinking water to be protective of human health and*
23 *municipal, industrial, and agricultural uses. The regional board*
24 *shall not disapprove or condition a project on either of the*
25 *following grounds:*

26 (1) The quality of the drinking water is different than the
27 quality of the groundwater into which the drinking water would
28 be injected, ~~percolated, or otherwise injected.~~

29 (2) The person filing the report under subdivision (b) would be
30 unable to recapture the actual drinking water that it proposes to
31 inject, ~~percolate, or otherwise convey~~ into groundwater storage.

32 (d) If the regional board does not take final action on a report
33 filed under subdivision (b) within six months of the date of its
34 filing with the regional board, the regional board shall be deemed
35 to have approved the project proposed in that report.

36 (e) The person who filed a report under subdivision (b), or any
37 other person who demonstrates a beneficial interest in a project
38 described in that report, may petition the state board to review
39 the regional board's decision on that project, or any condition on
40 the project adopted in that decision, under Section 13320.

1 (f) The state board shall take final action on any review under
2 subdivision (e) within six months of the date of receipt of that
3 petition. If the state board does not take final action on such a
4 petition within six months of the date of its receipt of that
5 petition, the petition shall be deemed denied.

6 (g) Notwithstanding any other provision of this division, this
7 section shall control the state board's, or a regional board's,
8 consideration of a project described in a report filed under
9 subdivision (b).

10 ~~(h) Nothing in this section, nor any other provision of law,~~
11 ~~shall prohibit the recovery from a groundwater basin of the net~~
12 ~~amount of drinking water percolated, injected, or otherwise~~
13 ~~conveyed into groundwater storage as part of a project approved~~
14 ~~under this section, whether or not that basin is overdrafted. For~~
15 ~~purposes of this subdivision, the term "net amount of drinking~~
16 ~~water" means the amount by which the project's percolation,~~
17 ~~injection, or conveyance of drinking water into groundwater~~
18 ~~storage increases the basin's usable groundwater supplies.~~

19 SEC. 5. Section 13267 of the Water Code is amended to read:

20 13267. (a) A regional board, in establishing or reviewing any
21 water quality control plan or waste discharge requirements, or in
22 connection with any action relating to any plan or requirement
23 authorized by this division, may investigate the quality of any
24 waters of the state within its region.

25 (b) ~~(1) In conducting an investigation specified in subdivision~~
26 ~~(a), the regional board may require that any person who has~~
27 ~~discharged, discharges, or is suspected of having discharged or~~
28 ~~discharging, or who proposes to discharge waste within its~~
29 ~~region, or any citizen or domiciliary, or political agency or entity~~
30 ~~of this state who has discharged, discharges, or is suspected of~~
31 ~~having discharged or discharging, or who proposes to discharge,~~
32 ~~waste outside of its region that could affect the quality of waters~~
33 ~~within its region shall furnish, under penalty of perjury, technical~~
34 ~~or monitoring program reports which the regional board requires.~~
35 ~~The burden, including costs, of these reports shall bear a~~
36 ~~reasonable relationship to the need for the report and the benefits~~
37 ~~to be obtained from the reports. In requiring those reports, the~~
38 ~~regional board shall provide the person with a written~~
39 ~~explanation with regard to the need for the reports, and shall~~

1 identify the evidence that supports requiring that person to
2 provide the reports.

3 (2) When requested by the person furnishing a report, the
4 portions of a report that might disclose trade secrets or secret
5 processes may not be made available for inspection by the public
6 but shall be made available to governmental agencies for use in
7 making studies. However, these portions of a report shall be
8 available for use by the state or any state agency in judicial
9 review or enforcement proceedings involving the person
10 furnishing the report.

11 (e) In conducting an investigation pursuant to subdivision (a),
12 the regional board may inspect the facilities of any person to
13 ascertain whether the purposes of this division are being met and
14 waste discharge requirements are being complied with. The
15 inspection shall be made with the consent of the owner or
16 possessor of the facilities or, if the consent is withheld, with a
17 warrant duly issued pursuant to the procedure set forth in Title 13
18 (commencing with Section 1822.50) of Part 3 of the Code of
19 Civil Procedure. However, in the event of an emergency
20 affecting the public health or safety, an inspection may be
21 performed without consent or the issuance of a warrant.

22 (d) The state board or a regional board may require any
23 person, including a person subject to a waste discharge
24 requirement under Section 13263, who is discharging, or who
25 proposes to discharge, wastes or fluid into an injection well, to
26 furnish the state board or regional board with a complete report
27 on the condition and operation of the facility or injection well, or
28 any other information that may be reasonably required to
29 determine whether the injection well could affect the quality of
30 the waters of the state.

31 (e) As used in this section, "evidence" means any relevant
32 evidence on which responsible persons are accustomed to rely in
33 the conduct of serious affairs, regardless of the existence of any
34 common law or statutory rule which might make improper the
35 admission of the evidence over objection in a civil action.

36 (f) The state board or a regional board may require any person
37 who injects, percolates, or otherwise conveys into storage in a
38 groundwater aquifer drinking water for later recovery and use
39 pursuant to Section 13228.5 to file with that board a report that
40 demonstrates that any water so injected, percolated, or otherwise

1 ~~conveyed complies with the definition of “drinking water” in~~
2 ~~subdivision (s) of Section 13050.~~

3 *(h) (1) The state board or regional board may require any*
4 *person who injects water into groundwater storage under this*
5 *section for later recovery and use to file with that board an*
6 *annual report that demonstrates that any water so injected*
7 *complies with the definition of “drinking water” as defined in*
8 *subdivision (k).*

9 *(2) This subdivision does not apply to any project that is not*
10 *approved pursuant to this section.*

11 *(i) This section does not apply to any of the following projects:*

12 *(1) A project in which water, including, but not limited to,*
13 *drinking water, is conveyed into groundwater storage by means*
14 *other than injection.*

15 *(2) A project that is part of a groundwater recharge program*
16 *that was in operation as of January 1, 2005. For purposes of this*
17 *paragraph, a “program” is a group of wells operated by the*
18 *same entity or related entities, that inject water into the same*
19 *groundwater basin for coordinated recovery.*

20 *(3) A project that is located within the boundaries of any*
21 *groundwater management agency or district established or*
22 *authorized by a special act of the Legislature.*

23 *(4) A project that is located within the boundaries of a*
24 *groundwater basin where a watermaster or other management*
25 *entity has authority over groundwater resources pursuant to a*
26 *judgment of the superior court.*

27 *(j) Noting in this section authorizes a regional board to*
28 *adjudicate, regulate, or otherwise affect any water rights.*
29 *Nothing in this section alters the authority of the state board over*
30 *water rights.*

31 *(k) As used in this section, “drinking water” means water that*
32 *has been permitted for human consumption by the State*
33 *Department of Health Services and is in compliance with the*
34 *applicable permit issued by that department.*