CPL, Water. Rewrite

Review of
WHO OWNS THE WATER?

by
Mason Gaffney

Comments are also included on the manuscript.

The author does not follow *CPI* guidelines with respect to length, footnotes, citations, and style. The paper is at least one-third too long. At least half of footnotes can be omitted. Many seem to have been added solely to build up the number of references. There is lots of jargon that is undefined which limits the audience for the paper. The use of personal pronouns makes the paper seem chatty.

In order to improve the focus of the paper several sections could be removed from the paper or combined. Some "fallacies" that are listed are false strawmen (e.g., who really believes that "real property is untouchable?") and some have no bearing on water rights (e.g., "economics is hostile to environmentalism"). It is hard to believe that there are 18 "common fallacies" that are equally important. Sections 2, 3, 4, & 7 would not be missed. The section on water rights could be written as a cohesive block. The sections on water markets [9, 10, 14, 15] could be combined to give a cohesive discussion of pros and cons of the current state of trades.

The paper has no conclusion--it is just a list of very loosely related items. Of course the lack of conclusion should not be surprising since there was no stated thesis for the paper. I think that the most important point of the paper is that the fundamental nature of the rights to water is misunderstood which makes current discussions of water markets fatally flawed. The author gives no clear picture of what common rights to water would be like. Would water trades exist or would the owner [government] be the sole broker?

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"Who Owns the Water?"

By Mason Gaffney

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"Hold the waters in the hands of the people."

- John Wesley Powell

The approach of this paper is to state and dispel common fallacies that stand in the way of recognizing and implementing common rights to water.

1. "Water rights are real property"

Wrong. To begin, "right" is wrong. A right is something like free speech, possessed by everyone. Most state constitutions read that the water of a state belongs to the state (in trust for the people).[1] In California it is Water Code Section 102: "All water within the State is the property of the people of the State, ..." Private water interests are mostly licenses, in the 17 western states. A water license has about the same standing as the privilege of some airlines to occupy certain time slots; of a cab to work the streets of New York; of a broadcaster to use a frequency; or of a rancher to graze on Federal lands. It is subject to conditions, and to forfeiture.

You do not find water licenses recorded like title deeds to real property. You hardly ever find them on the property tax rolls.[2] A water license may be taxed indirectly through the value of taxable real property it serves.[3] However, unused and misused

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[1] There are complex intergovernmental issues at the boundaries among states. There are Federal properties, too, and dozens of issues and lawsuits between states and the U.S. Here we confine our attention to one state.

[2] There are exceptions, too trivial to pursue here.

[3] The legal concept of "appurtenancy" is used to this end. Water rights are said to be "appurtenant" to the lands they serve, meaning they disappear into the land and are not listed separately for taxation. However when the owner wants to sell water separately from land, appurtenancy is no problem (Hutchins, 1956). Appurtenancy is a supple term that is used a) To give landowners preferential claims on water; b) To bolster the

water reservations, the major water problem of the day, do not much raise the value of any land. There is a tendency for owners and their lawyers to make permits seem solid and "real property" except when the subject is property taxation, at which point they evanesce. (The resulting double-talk has been deplored in Gaffney, 1962.)[4]

The upshot is that The Legislature has much latent power. In Oregon, a leading decision includes this: "It does not seem to me that water use in this country ever rose above the dignity of a mere privilege over which the state had complete control" (In re Hood River, 1924, 190-91). Law professors like Harrison Dunning and Joseph Sax have helped lay citizens know their latent powers over water permits (Dunning, 1982; Sax, 1990[5]).

2. "Real Property is Untouchable"

Wrong. Suppose the Oregon Chief Justice were in error, and water permits were real property. "Real" is an elided English form of the French "regal." In 1783 we simply transferred regal powers to our state governments, appropriately naming them "sovereign." These concepts are basic to the common law which has been brought into every U.S. state constitution (save Louisiana's)(James Huffman, 1989). By succession, real property means government property. Royal ownership has evolved into servitudes like eminent domain, the police power, the public trust doctrine, and the tax power. We will stress the last.

That doesn't imply the state power must be used autocratically. John Wesley Powell, army officer and Federal bureaucrat, said "Furnish the people with institutions of

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standing of water claims under color of real property; c) To protect water claims from taxation; and finally now d) To let surplus water claims be cashed out separately.

[4]Wells Hutchins' pamphlet on water law for California farmers reads in boldface headings "Water Rights are Real Estate," but the following text says no such thing (Hutchins, 1956b). His full-dress book of the same year even allows that the 1928 Amendment to the California Constitution limits water claims previously considered property, and these limits "apply to the use of all water under whatever right ..." (Hutchins, 1956a, p.19). "... the appropriator may take the surplus without giving compensation" (op. cit., p.18).

[5]The peroration of Sax's scholarly, documented treatise is quite stirring, as though inspired by Moses, Tolstoy and Henry George.

justice, and let them do the work for themselves" (Powell, "Institutions for the Arid Lands" 113, cit. Worster p.140). That will do as our text.

3. "You cannot take real property without compensation"

Wrong. Zoning can take away as much as 85% of the use value of land before it is declared an unconstitutional "taking" of property. The owner must be left with some "economically viable" use, meaning almost any use whose revenues exceed expenses, however small the net gain. Rent control, too, is consistently upheld. In a current case the court ruled that rent control helps tenants, and the fact "That rent control may unduly disadvantage others, ... do(es) not affect the constitutionality of the rent control law." (Egelko, 1991) Income tax payers are not compensated for losing the fruits of work and saving at rates which once soared as high as 90% at the top. Let's put a lid on wishful preaching about property rights that never existed.

4. "If property falls, America falls"

Wrong, at least in my opinion. Property is not an end in itself, but a means of getting resources put to their best use for the general good. To secure that end, property rights are instituted among men, deriving their just standing from the consent of the unpropertied. Property must work for the benefit of all. We have many degrees of freedom as citizens; we are not bound body and soul by decisions made, or allegedly made, in the past.

5. "The cost of water is passed through to consumers in higher prices"

Wrong. Prices are determined by supply and demand, not cost. If you sell in a national or world market, or even a competitive local market, you are a price-taker, not a maker.

In addition, water is an unusual kind of input whose high price may actually increase production. When you pay more for water you often switch to higher-valued crops. You substitute capital and labor for water on the same land, and often raise yields per acre.[6]

[6]Conversely, when water is cheap you substitute water for labor and capital. The effect of cheap water may be seen in the populations of Fresno, Kings and Tulare Counties, California. Their populations grew by 32% in the decade of dear water, 1940-50. Then they received an influx of cheap water from two

With dearer water you use less by controlling it better, switching from primitive furrow irrigation to sprinklers, spitters and drip. This in turn lets you do new things like growing avocadoes on steep hillsides formerly barren, yielding more dollars of product for less water. These facts point to a portentous corollary: you can raise public revenue from water while thereby improving the water economy.

6. "You can't stop a landowner from pumping on his own land"

Wrong. In coastal areas, pumping is limited and/or taxed to stop salt water intrusion. Districts that replenish ground water charge pumpers.[7] Pumping can be stopped to control movement of toxic plumes that destroy valuable aquifers: this is done in the Bunker Hill aquifer under the Santa Ana River.

Pumping is routinely stopped to prevent "export" of water from lands overlying an aquifer, under the "correlative rights" doctrine. It is not always well observed, and not often well-advised, but very well established (Katz v. Walkinshaw, 1903). If that does not suffice, pumping is controlled to prorate water among surface owners, and shorten pump lifts (City of Pasadena v. City of Alhambra, 1949). Also, pumping wells near streams can be stopped to prevent the indirect diversion of surface water (Tulare I.D. v. Lindsay-Strathmore I.D., 1935).

A partial solution to water problems would be a severance tax on withdrawals.[8] A tax can be viewed as an economic price

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Federally subsidized projects: Pine Flat Dam on the Kings River, and the Friant-Kern Canal of the Central Valley Project. For the next 26 years their populations stopped growing, and rural populations fell through outmigration (Ballard, p. 30).

[7]In 1959 the Orange County Water District, covering 180,000 acres, had been for years levying a "replenishment assessment" or charge on the production of ground water. The enabling legislation dates from 1933. In 1968-69 its pump tax rate was up to $13.30 per acre-foot for urban use. Water Code Sections 60220 and 55335 enable water replenishment districts anywhere (Crooke; Birdlebough and Wilkins, p.267-68; Weatherford, pp. 1035-36).

[8]Such a tax has been proposed by White, p.5; Boulding, p. 91; Charles Phelps et al., cit. Dennis, p.79; Brewer, pp. 240-42; Young and Martin; Billings; Gaffney 1969, 1973, 1977, 1988; and, indirectly, by van Schilfgaarde, p. 114. Colorado applies such a tax along the S. Platte River. It has "operated for several years, ... with little problem or controversy" (Young, Daubert, and Morel-Seytoux, p.790).

charged by the owner of water (the state) for using its property. The rationale is like that for effluent charges on polluters.

Whether one chooses taxation or regulation, we must constrain pumping if any system of surface control is to work. While California rations and conserves surface water, landowners in the San Joaquin Valley just punch more wells into the aquifers and pump up free water the State keeps recharging at high cost. In the drought of 1976-77, 10,000 new wells were drilled in the San Joaquin Valley (Weatherford, p.1031). Thus we have The Great Water Treadmill: subsidized water supply followed by overdraft followed by State rescue projects followed by new overdrafts, etc. ad bankruptcy.[9] Kern County landowners keep irrigating desert lands, overdrafting, and petitioning Sacramento for "emergency" aid. They even oppose metering city water, figuring that "if cities get slapped with meters, their wells are next." (News Services, 1991.)

Even quirky Arizona authorized a pump tax in 1980 (although for later implementation), and set about retiring some farmlands to reserve water for higher uses (Dunning, 1982b, pp. 41-43).[10] The pump tax is to be only at token levels, but so, once, was the first sales tax. They are relying heavily on direct regulations to promote conservation (Brown and Ingram, pp.23-24).

7. "Economics is hostile to environmentalism"

Partly wrong, although some economists are guilty. Economics, properly pursued, deals with how best to meet human wants, including conserving amenities, environments and resource supply. Many economists still think only of maximizing GNP measured in the old-fashioned way developed to mobilize resources for war. Others write only of sustaining farm land values, slighting the cost to fish, wildlife, and the taxpayers (Knapp.

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[9]Palm Springs and the Coachella Valley get water from the Colorado River Aqueduct and store it in their aquifer. The water would otherwise go to Los Angeles and environs, which would then need less from northern California (Warren, 1991). There is no constraint on pumping. There are 82 golf courses operating in the Coachella Valley, a Sonoran desert, and 50 more planned.

[10]The Carter Administration sought to avoid a repeat of the treadmill effect in Arizona. It required Arizona to control farm overdraft, as the price of getting the subsidized Central Arizona Project. In result, Arizona water is being urbanized much faster than California water (Peterson, 1986). Earlier, Arizona water economists Robert Young and William Martin had been called bad names for recommending the same thing (Martin and Young, 1967).

and Vaux, Jr., 1982)[11]. Buchanan and Tullock seem to rationalize such an attitude (Buchanan and Tullock, 1975).

Many others, however, are developing environmental and resource economics. Here are four common goals.

A. Economizing is conserving.

Rationalizing water use is inherently conserving. For example, if we put the Santa Ana River to its highest and best use, it would obviate heavy water imports, and the associated environmental damage. This river rises in an area of intense water shortage. There is no charge imposed on diverters at the source; Gage Canal Company customers (I am one) pay a small variable cost for the operating expenses of delivery, mostly by gravity. These plus an annual fixed charge come to some $20/af. We diseconomize accordingly.

Meantime, the State is importing water here at a true social cost of about $2,000 per acre foot, 100 times what we pay (Section #11, infra). If there were a market where we could sell, and a fortiori if there were a price charged us, at one-tenth of that amount we would release a great deal of water, averting imports.

B. Subsidy wastes both dollars and ecologies.

"You have no right to stop growth," says the hydro-imperialist. I agree, but neither have we any duty to subsidize growth. Water supply and flood control and navigation projects are heavily subsidized. Subsidy generates waste almost by definition, in the amount of the subsidy. It also creates scarcity of water where nature has given us plenty. On the lower Colorado River, every major user is subsidized, mostly by Congress. They pay nothing for water at the source, but are paid to withdraw it. Little wonder there is a shortage, and ecological damage.

Hydro-imperialism is the common enemy of Sierra Clubbers and economists. We need their political help: Congress responds better to organized ornithologists than model-churning economists. Sometimes the results are bizarre, but less so than the conventional results of porkbarrel politics.

C. Correct economic analysis prescribes more water for fish.

It is not uncommon for economists to slight water used for fisheries, reasoning that the fishery's "rent has been

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[11] These authors constrain their model with a paramount objective of protecting rents and prices of overlying farm land.

dissipated by the tragedy of the commons." The catch is only worth enough to pay the fishermen their opportunity cost. Take away the water and there is no net loss.

The fallacy is to say you should remove water from the use in which it is most scarce, precisely because it is scarce. This violates the basic law of variable proportions. The crowding of a fishery means the marginal value of water in that use is extremely high. In terms of redressing unbalanced factor proportions, adding water has the same effect as subtracting fishermen, which the same economists would approve.

D. Correct economic analysis presumes public trusts.

For years, economists would ask, say, canoers what they would pay to keep a river wild. They got modest numbers. Then someone thought to invert the question: what would the developer have to pay the canoers to take their river away?[12]. One arguing ex parte the canoers stresses that canoers' WTA (Willingness to Accept) is the relevant dollar value, and it is much higher than their WTP (Willingness to Pay).

Following Coase, one must have faith that WTP = WTA (Mitchell and Carson, 1981[13]). It doesn't matter how you assign entitlements; resources end up allocated the same, no matter who starts with all the chips.[14] However, "received theory" has "been unable to explain ... the persistently observed differences between WTP and WTA measures" (Cummings et al., 1986 p.41).[15] Could it be that "received theory" was received damaged?

It is common to hear "My home is not for sale at any price." One can take that attitude when she holds the entitlement. One never hears "I will pay any price." Coase's Theorem is a throwback to the old Manchester School, which prescribed "free trade in land" as the panacea for resource problems, brushing aside the offensive concentration of inherited entitlements.

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[12]The genii in question may have been Herfindahl and Kneese, 1965, rpt. 1974, p.287.

[13]In the 1981 work they find the difference is only 1%. They cite this approvingly, 1989, pp. 32-33.

[14]For an example of the genre see Wahl, p.130.

[15]Hanemann (1991) has tried valiantly to torture "received theory" into fitting the facts. One can only admire his refusal to follow those who sweep unwanted facts out with the trash. I doubt, however, if received theory warrants the close attention he gives it. Rather, he shows how stilted and unwieldy this theory has become.

Pollster-Coasians like Mitchell and Carson (1989) are hard pressed to reconcile people's answers with Coase, but they keep trying. One review faulted "the high rate of unusable responses." (Fischhoff, p.287.)[16] Why "unusable"? Carson has written that he throws out WTA answers when they exceed WTP answers by more than 5% (Mitchell and Carson, 1981, 1988; see also Mitchell and Carson, 1989, pp. 32-34, 226[17]). Sometimes over 50% of the responses are "invalid."[18] They don't fit the Coase model; they must be "methodological artifacts," "outliers," "protest responses," or "aberrations."

Consider aberrational aborigines with Treaty Rights to fish. Their WTP for those rights is minimal: the mere hypothesis they must pay implies they are impoverished and cannot pay. On the other hand, their WTA presumes they are in control. Ownership lets you be as unreasonable as you please.[19] We notice mainly when it is someone else, especially someone different.

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[16]Reviewer Fischhoff continued, "they still fall far short of the standards acceptable to research professionals."

[17]Mitchell and Carson are like Proteus, hard to pin down as they change guises. One must splice together different passages. It comes to this, however. High-valued answers to WTA questions are an "artifact," and not "meaningful." "WTP and WTA <u>should</u> be within 5% of each other ..." pp. 22-23 (emphasis supplied). To say "I want an extremely large ... amount of compensation for agreeing to this" is a "protest answer." 50% or more of all answers are often "protest" answers. These answers are "outliers." p.34. "Outliers" may be removed, either outright or by using statistical devices that have the effect of discounting them. p.226.

[18]The case is something like that of NASA's Goddard Space Flight Center that missed detecting the ozone hole before Farman found it in 1985. "Their instruments had recorded the losses (of ozone), but the computer interpreting the results had been programmed to ignore readings that deviated so far from normal" (<u>BW</u>, 22 July 91, p.10).

[19]The core of conservative theory is undermined by survey findings that WTA>>WTP. Conservative theory relies on Pareto's notion that no policy may take from one rich landowner to help a thousand starving orphans because you can't compare their subjective feelings. This is the bulwark of inherited property against redistribution. We must begin with the status quo and allow only win-win changes. When, however, we acknowledge common birthrights the shoe is on the other foot. Now you can't pollute anyone's air or water because the victims own it. Conservative theorists, seriously threatened, are busy plugging the dike.

Indians are an extreme case, but short generations back we share the same dependence on traditional lands held in common.[20] These traditions still live in the cultural subconscious, and affect current attitudes. They must find a place in formal micro modeling if it is to represent reality. If entitlement really doesn't matter, give it all to me. Otherwise let's get down to reality and bring distribution into economic analysis.

8. "Water conservation begins at home"

Wrong. Cutting domestic water use is tokenism. Some restaurants don't serve water unless you ask, to conserve water. One of them, in Solvang, is surrounded by irrigated horse pasture, and a golfing resort. An acre-foot is about 4.5 million glasses of water. An acre of grass drinks some 6 acre-feet/year, or 27 million glasses. A golf course is some 200 acres, using over 5.5 billion glasses a year. ~~Enough said.~~

Most "domestic" water use is not in-house, but for lawns. Most water use is not urban, but for farms. Most farm use is not in job-making crops like berries, tomatoes or fruits, but for alfalfa, irrigated pasture and rice.[21] Recent California "Water Bank" experience suggests how elastic farm demand is. In 1990, after five years of drought, the State bought surplus waters from "water farmers" on the Yuba River in the Northern Sierra and offered its free service as broker and wheeler to move it south to droughted growers. The "Bank" is still holding water it cannot sell at its cost.

9. "Water is too important to be left to the market"

Wrong. Real estate, more basic even than water, has long been allocated by the market. It's not the most efficient market, but it works better than what we see in Cuba or Russia. The Board Chair of MWD, presumably a non-Communist, has said that water markets would never work, your "water is here today and gone tomorrow." A market, however, is a two-way street. If you

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[20]Another large group to consider are the rural Hispanics of the southwest, who put a high value on preserving their communities. A survey in Taos and Questa, N.M., found 80.6% were "Opposed and don't want to sell." Only 6.1% answered yes to "Would sell if price is right" (Brown and Ingram, p.79). We are talking about poor people and expensive water.

[21]Young and Martin (1967) demonstrated this long ago in Arizona, showing the average product of water to be 60 times higher in industry than in sorghum.

can't get it back, it's not a market. You do have to pay for it, it's true: that is how markets will shift our waters to more productive uses. Markets also are subtly persuasive: now she is in the market herself.

In 1972 energy was short; so were raisins, coffee, and even toilet paper. The minor shortages were left to the market. Within a few weeks raisins, coffee and toilet paper were in normal supply. The shortage that lasted was energy, the one that was too important to leave to the market.

Consolidated 9,10,14,15

10. "The market can solve all problems"

Wrong. Here are four reasons it cannot.

A. Some human rights are unalienable.

You may not pledge or sell a child. May we then collectively pledge them for national debts? Right or wrong, we surely have done so, enslaving their future to our past, until they rebel. To atone, I suggest we protect whatever birthrights we can leave future generations. Water belongs to the states, as trustees for all citizens. The states are trustees for the rights of every helpless child born to pay future taxes.

That may be a right of access, where feasible. Often, access must be limited to manage the resource efficiently. This has been the occasion to extinguish common rights, but it need not be so. We need merely replace the common right of access with a state duty to collect revenues to serve common needs.

A right of revenue means a state would charge people for withdrawing its water to use on private lands, instead of subsidizing them to do it, as now. It would "turn Negabucks into Megabucks" for the state treasuries and their trustors, at the same time promoting efficient use of water.

B. Water distribution is a natural monopoly.

Most big water projects are multi-purpose and require centralized integration. Water conveyance, even single-purpose, is marked by economies of scale, so there is no place for parallel, competing lines. Rights-of-way are acquired by eminent domain, imposing a public servitude on the owner. Accordingly, water supply, conveyance and distribution are almost everywhere public, cooperative, or regulated. The free market needs help.

Water markets will not work by faith. There must be a central conveyance and integrating agency, regulated or administered in the public interest at a high level of economic

and financial sophistication, doing what a market would do if a market would work. That is not an idle dream. It is what state and federal commissions do for power, gas, communications, etc. These commissions will not work by faith, either. It takes hard work and dedication to keep them honest and capable. My plea is to accept that necessity and keep it a major project of the economics profession.

C. Markets require motivated sellers.

In 1961 I saw great promise in ridding water of legal barriers to alienability, making it merchantable (Gaffney 1961, 1962). Now, I startle and blush as "new resource economists" get totally carried away and make a panacea of the pink-slip[22]. Give out negotiable titles, they say, declare a free market, and watch the magic work (Anderson, 1983).[23]

RAND Corporation has thrown its prestige behind water marketing. California Assemblyman Richard Katz carried a statute in 1982 to remove some legal barriers to selling or leasing water permits[24]. The Environmental Defense Fund has converted itself into a water brokerage. In 1986 a new Katz bill let water transferors use conveyance facilities of public agencies[25]. Water marketing is all the rage.

The results are meager and disappointing, considering the pent-up needs.[26] Few deals have gone down,[27], even after five

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[22]Pink slip is California-speak for salable title to an automobile.

[23]Nancy Moore of RAND Corporation is partial to the pink-slip metaphor, but she and her former co-author Charles Phelps both seem temperate in their claims. By telephone interviews, Phelps is sensitive to the distributive issues raised here. Moore, an engineer, may or may not be, it's hard to be sure.

[24]AB 3491. The statute lets water districts act as brokers for individuals, and mandates state agencies to encourage and provide technical help. The State Department of Water Resources has set up a Water Transfers Committee to monitor and help.

[25]AB 2746.

[26]For $180/year one can keep current with Water Market Update, Santa Fe.

[27]It now seems likely that Imperial Irrigation District will transfer a small part of its large surplus to MWD. This deal has been in the making for some 40 years, and should probably not be attributed to recent legislation, according to Myron Holburt,

years of drought. Dauntless Assemblyman Katz is moving a third time to remove legal obstacles to water sales (Ellis, 1991b; Ellis, 1991c). The latest move lets individuals sell, bypassing the water districts that supply them[28]. This won't work well: it jeopardizes the distribution systems of water districts, which have survived by serving compact blocks of land to minimize conveyance costs (Gaffney, 1969).

Actually, water claims have been legally alienable, after a fashion, for many years[29]. "Water banking," too, has been around a long time[30]. Something else is obviously wrong, and it is this: the sellers are unmotivated. Water flows are perpetual, demand keeps growing, there is no cash drain and no hurry. The broker's delight, the motivated seller, is a family moving, or anyone with

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representing MWD. The "deal" was made in 1989, but no water is scheduled ~~expected actually~~ to be shifted until 1995, ~~(and who knows what may yet glitch it up)~~(Warren, 1991a). The amount proposed for transfer, 100,000 a.f., is only about 3% of the nearly 4 m.a.f. taken by irrigators on the lower Colorado, California side - more than a token, but just barely.

[28]Procedures for severing water from specific lands are still so clumsy and uncertain that MWD plans to rely mainly on buying lands outright and idling them, to get their waters (Warren, 1991). This extreme "meat-axe" procedure dates back to 1907: it is how Los Angeles got its Owens Valley waters (Kahrl, 1982; Ostrom).

[29]California Water Code Sections 1700-05 spell out procedures. Citing a 1942 case, Wells Hutchins wrote "The appropriative right is ... separable and alienable from the land to which it became initially appurtenant; ..." (Wright v. Best, 1942, cited in Hutchins, 1977, Vol. III, p.191.) 51 years ago in 1940 the Madera I.D. sold its water "filings" on the San Joaquin River to the U.S. Bureau of Reclamation for the Central Valley Project (Downey, p.6).

[30]Irrigation Districts along the Friant-Kern Canal were selling surplus Federal water in ~~the 1950~~s, with Federal blessing (Maass, 1952). Water filings by the Feds were granted by the State not to certain lands, but ~~for the~~ use and benefit of said Central Valley Project," to further a "general or coordinated plan ..." (California Farm Bureau, pp. 58, 60). Such pooling and banking was inherent in the ambitious "Marshall Plan," the comprehensive Statewide plan of the 1920s that devolved into the present Central Valley Project. In the 1977 drought there was active banking along the California Aqueduct (ironically, from south to north, and from urban to farm use) (Angelides and Bardach, p.17; Robie, p.49). In 1977 Congress authorized the U.S.B.R. to broker water sales (Robie, p.49; Wahl, pp. 136-38).

surplus land subject to debt and property taxes. Farm water districts are the broker's despair. Water permits are free of debt (banks don't lend on precarious tenures), and generally free of property tax.

The real estate market works, such as it does, because hundreds of thousands of deeds are recorded every year. The water market has only dozens. To get this market working we need some constructive use of property taxation or the equivalent.[31]

D. "Rent-seeking" perverts the market.

The prior appropriation doctrine for establishing water claims is the locus classicus of "rent-seeking": distorting present investment to secure future rents. The motive is to divert, develop and half-use water before its economic time, to lay claim to its future. In 1949 the California Supreme Court triggered a "race to the pump house" (Krieger and Banks, 62) when it proclaimed the doctrine of "mutual prescription" for groundwater basins (City of Pasadena v. City of Alhambra, 1949). This "encouraged defensive ground water overdrafting by pumpers in other basins who anticipated ground water adjudication" (Gleason, 709). Claims to water are constantly being made, expanded and firmed up; any giveaway process violates the virtues of the market. The rule for prior appropriators and adverse possessors is "Waste today, want not tomorrow."[32]

As we segue toward a market system speculators are moving in to acquire permits from present holders. The speculators visualize commercializing and moving the water, using political influence and legislation to modify the water permits. This is new, more sophisticated rent-seeking, blended with old-fashioned land speculation. It is raising great anxiety (Gottlieb, 1988, pp.261-80), and causing many to reject water marketing.

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[31] A water license is not real property, but a privilege. California's tax limit applies only to "real property." This raises the interesting possibility that a tax based on water licenses would be exempt from California's tax limit.

[32] "... farmers or cities first divert and use water by crude systems. Conservation measures often are delayed until the pinch is on." (Patterson, 1991) In 1962, The Orange County Water District sued every upstream diverter on the Santa Ana. In the 1969 judgement, "each water agency's allotment is based on historical use." (Patterson, 1991.) With that in mind, Riverside Mayor Davison boasted that "Riverside's water use doubled during my term of office" (1941-48). He deemed it an achievement. It minds one of the University Chancellor who boasted his greatest achievement was creating four new Vice-Chancellorships and several Associate Deanships.

There is a better way. A policy of taxing water withdrawals (as advocated herein), based on the opportunity cost of water, will do the job without giving away the benefits.

11. "The cost of water is the cost of developing it."

Wrong. It costs $20/acre-foot to develop and distribute the water I get from the Santa Ana River in Southern California. Meantime, the State is wholesaling imported water half a mile from me for ten times as much, $210 per acre-foot. Because of hidden subsidies, its true social cost is more like $2,000 per acre-foot, give or take a few hundred.[33] $2,000 is ten times what they charge for it, and 100 times what I pay for my local water.

The social cost of withdrawing water is the cost imposed on others by preempting it. "Avoided cost" is the familiar regulatory concept; "opportunity cost" the theoretical one. Santa Ana water is rent-bearing water; rent is part of social cost. We "old settlers" aren't getting the signal.

12. "We don't use water consumptively, but return it to the river."

Half wrong. To understand the meanings of "use" or "consume" in economics we must think in terms of entropy. The water user takes in pure water, at high elevation, at a time and place of his choice. He returns less pure water, at lower elevation, at another time and probably many scattered places of his choice, however inconvenient for those below. As to water quality, many return flows are worse than no return at all.

Water users also often preempt water from those upstream. On many streams the senior permits are downstream. Many downstream seniors have enjoined upstream juniors from diverting water, to be sure a suitable amount reached the downstream intakes. A good deal of valuable elevation is thus dissipated to the benefit of no one.[34]

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[33] No one ever could figure it out, so cooked are the books. A major effort was made by Alan Post, 1982; a minor one by Mason Gaffney, 1982.

[34] Gaffney, 1961. Consolidated People's Ditch Co. v. Foothill Ditch Co., 1928. Elevation of water has great value, even if not used to generate power, because it is a means of free movement by gravity.

13. "Common rights lead to the tragedy of the commons"

Half wrong, and misleading. "Tragedy of the commons" has become part of the culture, but analytically and economically it does not hit the nail on the head. Overdrafting aquifers is a tragedy, all would agree. Aquifers are not a commons, however: their use is restricted to overlying landowners, on overlying lands. The tragedy of overdraft could also be ascribed to landowners' unconstrained assertion of private property rights.

Overuse per se is the tragedy. Blaming it on common rights is biased. Asserting common rights need not imply open access and unrestricted use. It is often the opposite. Here are five examples of asserting common rights by restricting use: 1, constraining water use by taxing withdrawals; 2, constraining hunters and fishers by imposing bag limits; 3, constraining pollution of common waters by imposing effluent charges; 4, protecting watersheds by regulating timber harvest practices; 5, protecting swimmers and small boaters by limiting size and power of boats.

Economists like to believe they are "value-free." If so, they will replace the "tragedy of the commons" with "the tragedy of overuse." Overuse will often be ascribed to suppressing common rights, not upholding them.

14. "Water trades are win-win deals"

Partly wrong. Most water deals are "win-win-lose". The consistent loser is the general taxpaying public. Every sale of licenses helps legitimize private seizure of common property. Besides the common water, there are subsidies attached. In December, 1988, the U.S. Interior Department issued a water marketing policy to let recipients of subsidized water from its projects sell the water and keep the profit. The "innocent purchaser" would seem now to have secured a right to be subsidized in perpetuity. That is the overt position of Wahl, of Angelides and Bardach, and of the Environmental Defense Fund.

The idea of water marketing is to get government out of the way of the market. Wahl et al. would deal government in forever. Every subsidy and giveaway becomes a property right.[35] That means the taxpayers are bound forever to incur costs of $60/af or more

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[35]Compounding the offense, Wahl wrote this at exactly the time that 40-year contracts on CVP waters were expiring and were up for review. The whole point of those contracts, and the strife from 1948 on, was that they were not to be perpetual. Wahl would give away what even Congress and a compromising Commissioner of Reclamation had not given away.

to store and deliver water for $3.50/af to landowners who can resell it for $400 per acre foot.[36] This is the contradictory outcome of rent-sanctification.

Such thinking sends a message to future rent-seekers. Once get a subsidy or giveaway and you have a right to get it forever, and call it "property." The motive to agitate for new subsidies would be magnified; the state would be rushed to bankruptcy.

"Win-win" has a loud constructive ring, but cannot drown out a basic fiscal truth: no one taps the Treasury or grabs the public domain without hurting everyone else. Those who take public property in the name of the free market are not promoting the market, but exploiting its good name for private gain.

What we need is a "win-win-win" deal. We can have water marketing and common rights: make water permits transferable, but make permittees and contractors pay for what they get. Obviously, contractors getting subsidized water from Federal and State projects should pay the full cost of project services. It is growing equally obvious that the basic privilege of withdrawing rent-bearing water, surface or ground, should be subject to a user charge.[37] With growing demand and scarcity this is the heavy issue. ~~This way Smith wins, Jones wins, and the public wins (win-win-win).~~[38]

15. "Bureaucrats are the obstacle to water marketing"

Wrong: too simple. In the 1940s the U.S. Bureau of Reclamation tried to mobilize water along California's Friant-Kern Canal. Bureaucrats wrote of "pooling," and sending water "to whichever demand develops first" (Maass, 1952, p.546). The contracting local districts could and did sell surplus contract waters outside their boundaries.

Marketing and pooling were blocked by landowner lobbies who pushed for undisseverable attachment of specific waters to specific lands. "Appurtenancy" was the slogan. Senator Sheridan Downey was the spokesman. He demanded "... that the land and

---

[36] This is the main theme of the otherwise scholarly and useful study of Wahl, 1989. ~~He begins with it on p.3, repeats the point several times, and ends with it on p.295.~~

[37] Severance taxes, property taxes, and gains taxes, ~~in combinations of your choice, should do nicely.~~ could be part of the policy package.

[38] U.S. Senator Bill Bradley was promoting a bill that would, as of May 31, 1991, include a gains tax of 25% on transfers. (Ellis, 1991.) What happens to the bill is another question.

water should be joined together, never to be cut asunder; that the farmers should enjoy in perpetuity the use of the water ...; that when the land is sold, the right to water shall also be sold with it, and that neither should be sold separately" (Downey, 1947, pp. 226-27, emphasis supplied).

That does not leave much room for water marketing. Rather, it reminds us that the philosophical godparents of free markets, like Quesnay, Turgot, Smith, Ricardo and Mill, were engaged in fighting landowners who wanted protected markets. Many bureaucrats are fallen angels, granted; but who pushed them?

16. "Appropriative water licenses are democratic, like squatters' rights."

Wrong. First, you need to have been born long ago, in the right place, of white parents. A fast draw didn't hurt. Second, you need to have had land whereto to make the water "appurtenant".[39] Landownership in the southwest has been highly concentrated from an early time (Gates, 1978; Worster, pp. 98-111). It remains so today (Worster, pp. 243-47, 291-302; Villarejo, 1982; Fellmeth, 1973, pp. 3-25, 163-80; Gottlieb and Wolt, pp. 500-509). All three major doctrines of water law (riparian, appropriative, and correlative rights/mutual prescription for ground water) in effect restrict control of water to those with prior landownership.[40] Third, you need to have had ample front money to appropriate water ahead of need.

One commonly reads the appropriative doctrine originated with the 'Forty-niner miners, with their possessory placer mining claims. However the resemblance is specious. Placer mining claims were narrowly limited in space and time. They were just "ten feet square" in the good locations (Robinson, p.137), which were ant-heaps. As to time, placer mining claims expired when the mines ran out, usually soon. Water was for immediate use, not future rent-taking. "... it was by common consent declared" of this gold-bearing land that "no one might ... hold for a longer time than he continued to use it" (George, 1879, p.286).

---

[39]This is a concept and device to assure water is distributed to big landowners. When they want to sell surplus water, appurtenancy is forgotten.

[40]A water district owns little land itself, but holds water licenses in trust for landowners of the district. Thus water allocation inside the district is proportional to landownership (Dennis, 82, citing Rand Corporation).

18. "A severance tax on water withdrawals would destroy incentives and hurt the economy"

Wrong. Let's pull together and review what we've said about this. When you pay for water, you often shift to higher-valued crops. You substitute capital and labor for water, raising yields. Thus, we can tax water withdrawals while improving the water economy (item 5). Still not sure what "water economy" is

Possibly

We must control pumping to prevent overdraft, if any system of surface control is to work. A tax is an economic price charged by the owner of water, the state, to control the use of its property (item 6).

Common rights may be asserted as open access, where that is feasible; or rights of revenue, where efficient management calls for closing access. Not only would the tax-price promote efficient use, it would turn "Negabucks into Megabucks" for state treasuries and their trustors, the people (item 10,A).

Water markets currently do not work because sellers are not motivated by any cash drain, and selling prices rise indefinitely. To overcome this resistance, we need to subject water licenses to property taxes (or the equivalent) based on their opportunity cost values (item 10,C). This is what makes the land market work.

Taxes on water would let water markets work without granting unearned increments to speculators in water rights (item 10, D; item 14).

Taxing water withdrawals is a practical way to express common rights to water under conditions when it is not practical to allow open access (item 13).

Conclusion

Seem to imply that taxing water will solve whatever undefined problem this paper addresses.

Water, however, flows on forever, its scarcity value rising. Perpetual ownership is not at all what the 'Forty-niners originated.

17. "A super-district like the Metropolitan Water District of Southern California will rationalize the system."

Wrong in practise, although promising in potential. The trouble with sprawling districts is their propensity to cross-subsidize. MWD is dominated by land speculators, and milks the center for the fringes.

This is the fault of anti-democracy. MWD Directors are not elected but appointed. The appointing bodies are elected, but many come from water districts where the franchise is based on the assessed value of land owned: one-dollar, one-vote.[41]. Representatives from landowner districts remain the same from election to election, gaining seniority to dominate the 50-person Board and its ruling committees (Goodall et al., 1978, pp. 97-98. Bradley and Morales, 1981.) Thus a handful of speculative landowners, some living in other countries, have more control than millions of city residents. Cross-subsidy to benefit the controlling parties is the MWD way of life. Many economists have criticized MWD's refusal to consider a cost-justified rate structure.[42]

The MWD ideal is good; the practise is faulty, owing to landowner domination and exploitation of a public institution borrowing sovereign powers from the State. The remedies are the same as those advanced by Progressives like Hiram Johnson (R) and Woodrow Wilson (D): democratic control with professional leadership. That seems long ago and irrelevant, but I see hope. What destroyed Progressivism was The Cold War, which really began in 1919 with The Palmer Raids and is only now ending. This seems a good time to revive Progressivism. Aren't economists the natural professional leaders?

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[41]This is done through the California Water District Act (Water Code Sections 34000 et seq.) The original water districts in California were "Wright Act" Irrigation Districts. Products of the populist-Georgist era, they were and are controlled by popular vote. Large landowners put through the later Water District Act to fend off popular control.

[42]MWD has built up a surplus, or "rate stabilization fund," that it uses to avoid peak-load pricing. It also taps the fund for "interest-free" expansion capital (Krieger, 1991).

Darwin

#6 Dissipn. of valuable elem. Clarify main point.
Explanation needed.
Low head Hydro.

#7. Common prop. abused. / 1990 ± V. 19 : 86-107
Cite Bromley JEEM. ~~Equity Issues in Ecs~~
on misuse of "common prop ty"
Agee, 1972 ±, by Wantrup & Richard Bishop
~~cited in Bromley~~.

"Ideology of Eff: Search for a Thy of Policy Anal."

Refers "Fugitive Ress." as diff. from common.
R. Bishop is now at U of Wis.

STYLE INSTRUCTIONS FOR MANUSCRIPTS

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Put the **article's title** and **author's name**, all in capital letters, at the top of the first page rather than on a separate title page. **Make the title brief** as well as descriptive. Type an asterisk after the author's name (or after last author's name if the paper has more than one author). Indicate the author's title and affiliation in a footnote placed in the footnote section.

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Avoid mathematical exposition, complex statistical analysis, and complicated diagrams. Explain the analysis verbally so a person with only a basic knowledge of mathematics and statistics can understand. If appropriate, state in a footnote that more detailed formal exposition is available from the author. If the paper is based on quantitative analysis too technical for the journal's intended audience, send copies of that analysis with the manuscript to facilitate refereeing.

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Give references in the text or in footnotes by name of the author, with date of the reference (and pages when appropriate) enclosed in parentheses—e.g. (see Meltzer, 1987); Friedman (1986) argued...; according to Barth et al. (1985b, pp. 19–20). Complete references should appear only in the reference section following the text. Type the first line of each reference flush left, and indent all subsequent lines five spaces. Do not number references. List title of books and articles alphabetically by authors or by the group responsible for the publication if no specific author is given. Put legislation and court cases in separate sections at the end of the reference list. Press the underline key six times and follow with a comma to replace the author's name in consecutive references by the same author. Arrange multiple references by the same author chronologically.

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C. ***Examples***

Friedman, M., and A. J. Schwartz, *A Monetary History of the United States*, 1867–1960, Princeton University Press, Princeton, N.J., 1963.

Oi, W. Y., "Neglected Women and Other Implications of Comparable Worth," *Contemporary Policy Issues*, April 1986, 21–31.

Legislation

Consumer Goods Pricing of 1975, Public Law 94–145, 89 Stat. 801 (1975).

Cases

Monsanto Company v. Spray-Rite, 52 LW 4341 (1984).

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Use footnotes only when absolutely necessary, and keep them short. Put short parenthetical comments within parentheses in the body of the text, rather than in footnotes. Designate footnotes in the text by superscripts, numbered consecutively. Put footnotes in a separate section following the reference section. Begin the first page of footnotes on a new page. Indent the first line of each footnote. The initial footnote (before footnote number 1) carries an asterisk. It should give the author's title and affiliation and include any credits or caveats the author cares to mention. In this initial footnote, indicate the WEA International conference at which the paper was presented—including the city, date, and session organizer, if appropriate. (See recent *CPI* editions.)

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Number tables consecutively with Arabic numerals above each table—e.g., TABLE 1. Make column headings as brief as possible. Give data sources below each table. Indicate footnotes to tables by lower case Roman superscripts. Indent the first line of each footnote. Number figures consecutively with Arabic numerals above each figure—e.g., FIGURE 1. Provide camera-ready copy for each figure. Put all tables and figures—each on a separate page—at the end of the paper, after the text, references, and footnotes.

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~~Timely ts~~

Intro.

Current probs may be solved by sev. tax packages.
rent-, prop.-taxes

a. Xfrs, mkts.

b. Conss.

c. ~~Raise rev~~, cut, improd pub. spendg, recoup from benefic's of pub. spendg & ~~exempt~~ frants, poss. of public domain.

d. Risj conc. of wtr. courts.

e. ~~Unjustified~~ Intrinsically distrt of grnd & surface

f. adjustment to new recognition of env. values, ~~in~~ wisdom wtr. & Pub. Trust

~~Obstacles are fallacies~~ & ~~misperceptions re nature of wtr~~ No. of fallacies impede one of that solution, prop. is addressed here.

1. ~~"Wtr rts are real prop"~~ (they are public domain)

~~2-3-4: Salvage bits, put here.~~

~~Incorp 5: underground wtr. can be xfd + owned~~

~~5. Fee title wtr. belongs to O by~~ even tho usually is it.
It is wrong

~~5. O's bigj landowners have special claims on underground wtr.~~

~~Underground wtr is legally~~

5. ~~6~~. "Cost Pass Through"

7. Wtr. mkts. ~~is~~ + tend to be $-oriented, ∴ hostile to env.

Rewrite: Who Owns the Wtr

Outline

Intro

1. "Wtr. Rts. are Real Prop." Add 16, approp. rts. are demo.
2. "Cost of wtr. passed thru."

3 4. Mkt. can solve all problems.

Reinforces 2; also conceals rent

3 4. "Cost of wtr. is cost of deliv it": ~~Is Lemon~~, Refute: supply is natural

5 Eff. 5. Wtr. Cons. begins at home. unaffected by price.

This plays on middle class guilt conceals the real waste.

6. 5. Only cons. use shd. be charged. Conceals value of ~~them~~ negative entropy

7. 6. Common rts → Tragedy of Commons.

Conceals role of Govt. as ex. tool to implement common rts.

8 7. A superclerk can rationalize the system.

I.Ds. have rationalized on small scale: why not on large?

Conclusion: Use 18 } MWD ~~is~~ is already a step.

- other referee report -

I recommend that you publish Gaffney's paper as it is, provided that you have a bibliography for it.



For Your Information

Compliments of
SENATOR ROBERT PRESLEY
36th Senatorial District
California Legislature

District Addresses:
3600 Lime Street, Room 111
Riverside, CA 92501

72-811 Highway 111
Suite 201
Palm Desert, CA 92260

Sacramento Address:
State Capitol
95814



(5) The bill would impose a state-mandated local program by requiring local law enforcement agencies to provide services in performing writs of execution.

(6) The bill would also make it a misdemeanor or felony, as specified, for any person to violate the provisions of the Safe Drinking Water, Fish, and Wildlife Surcharge Law, thereby imposing a state-mandated local program by creating a new crime.

(7) 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 for certain costs no reimbursement is required by this act for a specified reason.

However, the bill would provide that if the Commission on State Mandates determines that the bill contains other costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide costs does not exceed $1,000,000, shall be payable from the State Mandates Claims Fund.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: ~~no~~ *yes*.

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

SECTION 1. Section 25360 of the Health and Safety Code is amended to read:

25360. (a) Any costs incurred and payable from the state account, the Safe Drinking Water and Groundwater Cleanup Account, or the Hazardous Substance Cleanup Fund shall be recovered by the Attorney General, upon the request of the ~~department~~ *Secretary for Environmental Protection*, from the liable person or persons. The amount of any costs which may be recovered pursuant to this section, for a remedial or removal action paid from the Hazardous Substance Cleanup Fund, shall include the amount paid from that fund and interest on that amount calculated at a rate equal to the interest rate of the bonds sold pursuant to Article 7.5 (commencing with Section 25385).

(b) Except as provided in subdivision (c), in addition to the costs specified in subdivision (a), the person or persons are liable to the ~~department~~ *Secretary for Environmental Protection* for administrative costs in an amount equal to 10 percent of the reasonable cost actually incurred, or five hundred dollars ($500), whichever is greater.

(c) The total liability of a person who is liable for costs incurred and payable from the state account for a removal or remedial action taken pursuant to an order issued or agreement entered into pursuant to paragraph (1) of subdivision (a) of Section 25355.5, or an order issued pursuant to subdivision (a) of Section 25358.3, or for other costs incurred and payable from the state account, the Safe Drinking Water and Groundwater Cleanup Account, or the Hazardous Substance Cleanup Fund, shall be reduced by the amount of fees paid pursuant to Section 25343.

(d) The amount of cost determined pursuant to this section shall be recoverable in a civil action. Nothing in this section deprives a party of any defense he or she may have.

(e) Money recovered by the Attorney General pursuant to this section shall be deposited in the state account, except that, if the costs incurred were paid from the Hazardous Substance Cleanup Fund, the Attorney General shall deposit the amounts recovered into the Hazardous Substance Clearing Account or if the costs were paid from the Safe Drinking Water and Groundwater Cleanup Account, the Attorney General shall deposit the amounts recovered into that account. Money deposited in the Hazardous Substance Clearing Account pursuant to this section are available to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385).

SEC. 2. Section 25360.4 of the Health and Safety Code is amended to read:

25360.4. (a) An action under Section 25360 for the recovery of the costs of removal or remedial action incurred by the ~~department~~ *Secretary for*

The bill would require the money in the fund to be transferred, as prescribed, to the Safe Drinking Water and Groundwater Cleanup Account and the Fish and Wildlife Resource Account, which the bill would create. The bill would require the State Director of Health Services to use the money in the Safe Drinking Water and Groundwater Cleanup Account, upon appropriation by the Legislature, for grants to public agencies or loans to local water entities for projects which will enable those public agencies or entities to meet minimum safe drinking water standards. The bill would authorize the state director to transfer money, as prescribed, between the Safe Drinking Water and Groundwater Cleanup Account and the Safe Drinking Water Subaccount, which the bill would create within that account. The bill would continuously appropriate the money in the subaccount to carry out the loan and grant program. The bill would also require the state director to use the money in the Safe Drinking Water and Groundwater Cleanup Account, upon appropriation by the Legislature, for specified actions related to the cleanup of prescribed hazardous substance release sites and the cleanup and prevention of pollution of groundwater. The bill would require the state director to use the money in the Fish and Wildlife Resource Account, upon appropriation by the Legislature, for the restoration of fish and water-dependent wildlife resources. The bill would make related changes. ~~The~~

(2) Certain provisions of the bill would be operative only if certain amendments to the California Constitution, as proposed by SCA _____, are approved at the _____ election.

(3) The bill would make various statements of legislative findings and declarations of legislative intent.

(4) The Political Reform Act of 1974, an initiative measure, that provides that the Legislature may amend the act to further the act's purposes with a ⅔ vote of each house and compliance with specified procedural requirements, among other things, prescribes the contents of ballot pamphlets.

This bill would prescribe the official title and summary of an unspecified SCA. The bill would declare that it furthers the purposes of the act.

participating in a low-income ratepayer assistance program established by the Public Utilities Commission pursuant to subdivision (g) of Section 739 of the Public Utilities Code, or a comparable program providing for residential ratepayer assistance established by the ratemaking authority of a public agency that furnishes electricity, gas, or water service to its retail customers, is exempt from the surcharge.

(4) The delivery of reclaimed wastewater is exempt from the surcharge.

14362. (a) The money generated from the charge imposed pursuant to Section 14361 shall be deposited in the fund, which is hereby created.

~~(b) The money in the fund shall be transferred, as~~

(b) The money in the fund may be expended as follows:

(1) To pay for the costs incurred by the State Board of Equalization in the administration of the surcharge imposed pursuant to Section 14361.

(2) To pay refunds of overpayments of the surcharge collected pursuant to Section 14361.

~~(1)~~

(3) (A) Two-thirds to the Safe Drinking Water and Groundwater Cleanup Account, which is hereby created in the fund.

(B) There is within the Safe Drinking Water and Groundwater Cleanup Account the Safe Drinking Water Subaccount.

~~(2)~~

(4) One-third to the Fish and Wildlife Resource Account, which is hereby created in the fund.

14363. The State Director of Health Services shall use the money in the Safe Drinking Water and Groundwater Cleanup Account, upon appropriation by the Legislature, for grants to public agencies or for loans to local water entities authorized to construct, operate, and maintain public water systems to aid in the construction of projects which will enable those agencies or entities to meet, at a minimum, safe drinking water standards established pursuant to Chapter 7 (commencing with Section 4010)

of Part 1 of Division 5 of the Health and Safety Code.

14363.1. (a) The State Director of Health Services may transfer money from the Safe Drinking Water and Groundwater Cleanup Account to the Safe Drinking Water Subaccount to carry out Section 14363. If, in the judgment of the State Director of Health Services, the money in the subaccount is not needed to carry out Section 14363, he or she may transfer the money to the Safe Drinking Water and Groundwater Cleanup Account.

(b) Notwithstanding Section 13340 of the Government Code, the money in the Safe Drinking Water Subaccount is hereby continuously appropriated, without regard to fiscal years, to the State Department of Health Services to carry out Section 14363.

14363.3. The Legislature hereby finds and declares all of the following:

(a) The State Department of Health Services has discovered toxic contaminants in many of California's public drinking water systems.

(b) Many of the contaminants in California's drinking water supplies are known or suspected of causing cancer, birth defects, and other serious illnesses.

(c) It is unlikely that the toxic contamination problems of small public water systems can be solved without financial assistance from the State of California.

14363.5. The Legislature further finds and declares that the protection of the health, safety, and welfare of the people of California requires that water supplied for domestic purposes be at all times pure, wholesome, and potable, and that it is in the interest of the people that the State of California provide technical and financial assistance to the end that the people of California are ensured a safe, dependable, and potable supply of water for domestic purposes and that water is available in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes.

14363.7. The Legislature further finds and declares that it is the intent of the Legislature to provide for the upgrading of existing public water supply systems to

AMENDED IN ASSEMBLY AUGUST 21, 1991
AMENDED IN ASSEMBLY JUNE 27, 1991
AMENDED IN SENATE MAY 14, 1991
AMENDED IN SENATE APRIL 11, 1991

SENATE BILL No. 959

Introduced by Senator Presley

March 8, 1991

An act to amend Sections 25360, 25360.4, 25361, and 25365 of the Health and Safety Code, *to add Part 27 (commencing with Section 55000) to Division 2 of the Revenue and Taxation Code,* and to add Chapter 23 (commencing with Section 14350) to Division 7 of the Water Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 959, as amended, Presley. Water supplies.

(1) Existing law provides for various programs for financing the construction and improvement of domestic water systems, for the cleanup of hazardous substance releases, and for the restoration and enhancement of fish and wildlife resources.

This bill would enact the Safe Drinking Water, Fish, and Wildlife Act of 1992. The bill would impose an annual charge on an urban retail water supplier that delivers or receives 500 acre-feet or more of water, as prescribed, thereby imposing a tax for purposes of Article XIII A of the California Constitution. *The bill would require the Board of Equalization to administer and collect this surcharge, as specified.* The bill would require the money generated from the charge to be deposited *by the board* in the Safe Drinking Water, Fish, and Wildlife Fund, which the bill would create.

Environmental Protection from the state account, the Hazardous Substance Cleanup Fund, the Safe Drinking Water and Groundwater Cleanup Account, or any other source authorized by law, or for the recovery of administrative costs incurred by the ~~department~~ *Secretary for Environmental Protection* in connection with any removal or remedial action performed by the ~~department~~ *Secretary for Environmental Protection* or by any responsible party, shall be commenced within three years after completion of the removal or remedial action has been certified by the department.

(b) An action under subdivision (c) of Section 25352 for costs incurred by the ~~department~~ *Secretary for Environmental Protection* for the purposes specified in subdivision (a) or (b) of Section 25352 shall be commenced within three years after certification by the ~~department~~ *Secretary for Environmental Protection* of the completion of the activities authorized under subdivisions (a) and (b) of Section 25352.

(c) In any action described in subdivision (a) or (b) for recovery of the costs of a removal action, a remedial action, administrative costs, or damages, where the court has entered a judgment for these past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine any future liability and the amount. The ~~department~~ *Secretary for Environmental Protection* may immediately enforce the judgment for past costs and damages. The ~~department~~ *Secretary for Environmental Protection* may apply for a court judgment as to future costs and damages that have been incurred at any time during the removal and remedial actions or during the performance of the activities authorized by Section 25352, but the application shall be made not later than three years after the certification of completion of the actions or activities.

(d) An action may be commenced under Section 25360 or subdivision (c) of Section 25352 at any time prior to expiration of the three-year limitation period provided for by this section.

SEC. 3. Section 25361 of the Health and Safety Code is amended to read:

25361. (a) The state account, the Safe Drinking Water and Groundwater Cleanup Account, or the Hazardous Substance Cleanup Fund shall be a party in any action for recovery of costs or expenditures under this chapter incurred from the state account, the Safe Drinking Water and Groundwater Cleanup Account, or the Hazardous Substance Cleanup Fund.

(b) In the event a district attorney or a city attorney has brought an action for civil or criminal penalties pursuant to Chapter 6.5 (commencing with Section 25100) against any person for the violation of any provision of that chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted, or executed thereunder, and the ~~department~~ *Secretary for Environmental Protection* has expended moneys from the state account pursuant to Section 25354 for immediate corrective action in response to a release, or threatened release, of a hazardous substance which has resulted, in whole or in part, from the person's acts or omissions, the state account may be made a party to that action for the purpose of recovering the costs against that person. If the state account is made a party to the action, the Attorney General shall represent the state account for the purpose of recovering the moneys expended from the account. Notwithstanding any other provision of law, and under terms that the Attorney General and the ~~department~~ *Secretary for Environmental Protection* deem appropriate, the Attorney General may delegate the authority to recover the costs to the district attorney or city attorney who has brought the action pursuant to Chapter 6.5 (commencing with Section 25100). The failure to seek the recovery of moneys expended from the state account as part of the action brought pursuant to Chapter 6.5 (commencing with Section 25100) does not foreclose the Attorney General from recovering the moneys in a separate action.

SEC. 4. Section 25365 of the Health and Safety Code is amended to read:

25365. The entry of judgment against any party to the action shall not be deemed to bar any future action by the state account, the Safe Drinking Water and Groundwater Cleanup Account, or the Hazardous Substance Cleanup Fund against any person who is later discovered to be potentially liable for costs and expenditures paid by the state account.

SEC. 5. *Part 27 (commencing with Section 55000) is added to Division 2 of the Revenue and Taxation Code, to read:*

PART 27. SAFE DRINKING WATER, FISH, AND WILDLIFE SURCHARGE LAW

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

55000. This chapter shall be known and cited as the Safe Drinking Water, Fish, and Wildlife Surcharge Law.

55001. The collection and administration of the surcharge referred to in Section 55010 shall be governed by the definitions contained in Chapter 23 (commencing with Section 14350) of Division 7 of the Water Code, unless expressly superseded in this part.

55002. "Board" means the State Board of Equalization.

55003. "Person" includes any individual, firm, cooperative, organization, fraternal organization, corporation, estate, trust, business trust receiver, trustee, syndicate, and any state or local public agency.

55004. "Taxpayer" means any person liable for the payment of the surcharge imposed by Section 14361 of the Water Code.

CHAPTER 2. SAFE DRINKING WATER, FISH, AND WILDLIFE SURCHARGE

Article 1. Imposition of Surcharge

55010. The surcharge imposed pursuant to Section 14361 of the Water Code shall be administered and

collected by the board in accordance with this part.

Article 2. Registration and Security

55020. Every person who delivers or receives water of 500 acre feet or more, shall register with the board.

55021. The board, whenever it deems necessary to ensure compliance with this part, may require any person subject to this part to place with it any security that the board determines to be reasonable, taking into account the circumstances of that person. The board may sell the security at public auction if it becomes necessary to do so in order to recover any surcharge or any amount required to be collected, including any interest or penalty due. Notice of the sale shall be served upon the person who placed the security personally or by mail.

If service is made by mail, the notice shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold at private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

CHAPTER 3. DETERMINATIONS

Article 1. Returns and Payments

55030. (a) The surcharge collected and administered under Section 55010 is due and payable to the board annually on or before _____ of each year.

(b) Every person subject to the surcharge imposed pursuant to Section 14361 of the Water Code shall, on forms prescribed by the board, file an annual return and pay the proper amount of the surcharge due.

55031. The board, if it deems necessary in order to ensure payment to or facilitate the collection by the state of the amount of the surcharges, may require returns and payment of the amount of surcharges for periods other than annual periods.

55032. (a) The board for good cause may extend, for not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time if a request therefor is filed with the board within or prior to the period for which the extension may be granted.

(b) Any person to whom an extension is granted shall pay, in addition to the surcharge, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the surcharge would have been due without the extension until the date of payment.

55033. If the surcharge is not paid to the board within the time prescribed for the payment of the surcharge, a penalty of 10 percent of the amount of the surcharge shall be added thereto on account of the delinquency.

55034. All surcharges not paid on the date when due and payable shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date until paid.

55035. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Section 55033.

Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

Article 2. Deficiency Determinations

55040. (a) If the board is dissatisfied with the return filed or the amount of the surcharge paid to the state by any taxpayer, or if no return has been filed or no payment

of the surcharge has been made to the state by a taxpayer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more additional determinations may be made of the amount of the surcharge due for one, or for more than one period. The amount of the surcharge so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the surcharge, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or authorized regulations, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the taxpayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the taxpayer at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, subpost office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time

of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

55041. Except in the case of fraud, intent to evade this part, authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

55042. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate, or trust or by any other person liable for the surcharge or any portion thereof.

55043. If before the expiration of the time prescribed in Section 55041 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Article 3. Redeterminations

55050. Any person from whom an amount is determined to be due under Article 2 (commencing with Section 55040), or any person directly interested, may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

55051. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

55052. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and if the person has so requested in his or her petition, the board shall grant him or her an oral hearing and shall give him or her 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

55053. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the 25 percent penalty imposed by subdivision (c) of Section 55040 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the return for the period for which the increase is asserted was due.

55054. The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

55055. All amounts determined to be due by the board under Article 2 (commencing with Section 55040) are due and payable at the time they become final, and, if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

55056. Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by Section 55040.

Article 4. Jeopardy Determinations

55060. If the board believes that the collection of any amount of the surcharge will be jeopardized by delay, it shall thereupon make a determination of the amount of the surcharge due, noting that fact upon the determination, and the amount of the surcharge shall be immediately due and payable. If the amount of the surcharge, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of determination, the determination becomes final, and the delinquency penalty and interest provided in Sections 55033 and 55034 shall attach to the amount of the surcharge specified therein.

55061. The taxpayer against whom a jeopardy determination is made may file a petition for redetermination thereof, pursuant to Article 3 (commencing with Section 55050), with the board within 10 days after the service upon the taxpayer of notice of the determination, but he or she shall, within the 10-day period, deposit with the board the security as it deems necessary to ensure compliance with the provisions of this part. The security may be sold by the board at public sale if it becomes necessary to do so in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 55040. Upon any sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

55062. In accordance with these rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive.

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or

any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(c) To request the release of all or a party of the property to the person.

(d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice ofjeopardy determination and shall be in writing and state the specific factual legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 55061, that security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect the provisions of Section 55060, relating to the finality date of the determination or to penalty and interest.

CHAPTER 4. COLLECTION OF TAX

Article 1. Suit for Tax

55070. The board may bring any legal actions as are necessary to collect any deficiency in the surcharge required to be paid, and, upon the board's request, the Attorney General shall bring the actions.

55071. In any suit brought to enforce the rights of the state with respect to the surcharge, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the surcharge, of the delinquency of the amount of the surcharge, interest, and penalty set forth therein, and compliance by the board with all

provisions of this part in relation to the computation and levy of the surcharge. In the action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

Article 2. Judgment for Tax

55080. (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. A lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For amounts determined under Section 55060, the date the notice of the board's finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

55081. (a) If the board determines that the amount of the surcharge, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the surcharge, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may

release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that such property has been released or that the lien has been subordinated as provided in the certificate.

Article 3. Warrant for Collection

55090. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal, or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

55091. The board may pay or advance to the sheriff, marshal, or constable, the same fees, commissions, and expenses for their services as are provided by law for similar services pursuant to writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

55092. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the surcharge.

Article 4. Seizure and Sale

55100. Whenever any taxpayer is delinquent in the payment of the surcharge, the board, or its authorized

representative, may seize any property, real or personal, of the taxpayer, and sell at public auction the property seized, or a sufficient portion thereof, to pay the surcharge due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

55101. Notice of the sale, and the time and place thereof, shall be given to the delinquent taxpayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manners: The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property thereof is located. Notice shall also be posted in both of the following manner:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including the surcharge, interest, penalties, and costs, the name of the taxpayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and notice.

55102. At the sale the property shall be sold by the board, or by its authorized agent, in accordance with law and notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any

real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of taxpayer.

55103. If, after the sale, the money received exceeds the amount of all surcharges, penalties, and costs due the state from the taxpayer, the board shall return the excess to him or her and obtain his or her receipt. If any persons having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If the receipt of the taxpayer is not available, the board shall deposit the excess moneys with the Treasurer, as trustee for the owner, subject to the order of the taxpayer, his or her heirs, successors, or assigns.

Article 5. Miscellaneous

55110. If any taxpayer is delinquent in the payment of any obligation imposed by this part, or if any determination has been made against a taxpayer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the taxpayer, or owing any debts to the taxpayer. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

55111. After receiving the notice, the persons so notified shall not transfer or make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive

the notice until the board consents to a transfer or disposition or until 60 days after the receipt of the notice, whichever occurs first.

55112. All persons so notified shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or mailed to the branch or office of the bank at which the deposit is carried or at which the credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

55113. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given, if solely by reason of that transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

55114. The board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to the taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of the surcharge, interest, or penalties due

from the taxpayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate.

In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

55115. The remedies of the state provided for in this article are cumulative, and no action taken by the board or by the Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

55116. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his or her assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien, as provided in Section 7171 of the Government Code.

The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

CHAPTER 5. OVERPAYMENTS AND REFUNDS

Article 1. Claim for Refund

55120. If the board determines that any amount of the surcharge, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify to the State Board of Control the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid. If approved by the State Board of Control, the excess amount collected or paid shall be credited on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors.

However, in the case of a determination by the board that an amount not to exceed fifty thousand dollars ($50,000) was not required to be paid under this part, the board, without obtaining the approval of the State Board of Control, may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors.

55121. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 1 (commencing with Section 55030) of Chapter 3, within six months after the determinations have become final, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 55035.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 55035 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

55122. Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

55123. Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant pursuant to Section 55040.

55124. Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the date of the return for the period for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 15th day of the calendar month following the date upon which the claimant is notified by the board that a claim may be filed or the date upon which the claim is certified to the State Board of Control, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the surcharge or amount against which the credit is applied.

55125. If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

Article 2. Suit for Refund

55130. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any office of the state to

prevent or enjoin the collection of any surcharge sought to be collected.

55131. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

55132. Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

55133. If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

55134. Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

55135. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any tax due from the plaintiff, and the balance shall be refunded to the plaintiff.

55136. In any judgment, interest shall be allowed at the modified adjusted rate per month established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

55137. A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any surcharge paid when the action is brought by or in the name of an assignee of the taxpayer paying the

surcharge or by any person other than the person who has paid the surcharge.

As used in this section, "assignee" does not include a person who has acquired the business of the taxpayer which gave rise to the surcharge and who is thereby a successor in interest to the taxpayer.

Article 3. Recovery of Erroneous Refunds

55140. The Controller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California, and the action shall be tried in the County of Sacramento unless the court, with the consent of the Attorney General, orders a change of place of trial. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

Article 4. Cancellations

55150. If any amount in excess of fifty thousand dollars ($50,000) has been illegally determined, either by the person filing the return or by the board, the board shall certify to the State Board of Control the amount determined to be in excess of the amount legally due and the person against whom the determination was made. If the State Board of Control approves, it shall authorize the cancellation of the amount upon the records of the board. If an amount not exceeding fifty thousand dollars ($50,000) has been illegally determined, either by the person filing a return or by the board, the board, without certifying this fact to the State Board of Control, shall authorize the cancellation of the amount upon the records of the board.

CHAPTER 6. ADMINISTRATION

55160. The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

55161. The board may make those examinations of the books and records of any taxpayer as it may deem necessary in carrying out this part.

55162. The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

55163. a certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

CHAPTER 7. DISPOSITION OF PROCEEDS

55170. All surcharges, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Section 55010 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the Safe Drinking Water, Fish, and Wildlife Fund.

CHAPTER 8. VIOLATIONS

55180. Any person who refuses to furnish any return or report required to be made, or who refuses to furnish a supplemental return or other data required by the

board, is guilty of a misdemeanor and subject to a fine not to exceed five hundred dollars ($500) for each offense.

55181. Any person who knowingly or willfully files a false return or report with the board, and any person who refuses to permit the board or any of its authorized representatives to make any inspection or examination for which provision is made in this part, or who fails to keep any records prescribed by the board, or who fails to preserve the records for the inspection of the board for such time as the board deems necessary, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000), by imprisonment in the county jail for not less than one month or more than six months, or by both.

55182. Any person who willfully evades or attempts in any manner to evade or defeat the payment of the surcharge imposed by this part is guilty of a felony punishable by imprisonment in the state prison for 16 months, 2, or 3 years and a fine of not more than five thousand dollars ($5,000).

55183. Every person convicted for a violation of any provision of this part for which another penalty or punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500), by imprisonment in the county jail for not more than six months, or by both.

55184. Any prosecution for violation of any provision of this part shall be instituted within three years after the commission of the offense.

CHAPTER 9. DISCLOSURE OF INFORMATION

55190. (a) The board shall provide any and all information obtained under this part to the State Department of Health Services.

(b) The State Department of Health Services and the

board may utilize any information obtained pursuant to this part to develop data on the treatment, storage, or distribution of water.

(c) It is unlawful for the board, or any person having an administrative duty under Part 9 (commencing with Section 15600) of Division 3 of Title 2 of the Government Code to make known, in any manner whatsoever, the business affairs, operations, or any other information pertaining to a taxpayer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof to be seen or examined by any person not expressly authorized by subdivision (a) and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) Notwithstanding subdivision (c), the successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information regarding the determination of any unpaid surcharge or the amount of the surcharge, interest, or penalties required to be collected or assessed.

(e) Nothing in this section shall be construed as limiting or increasing the public's access to information on any aspect of the treatment, storage, or distribution of water collected pursuant to other state or local laws, regulations, or ordinances.

SEC. 6. Chapter 23 (commencing with Section 14350) is added to Division 7 of the Water Code, to read:

CHAPTER 23. SAFE DRINKING WATER, FISH, AND WILDLIFE ACT OF 1992

14350. This chapter shall be known and may be cited as the Safe Drinking Water, Fish, and Wildlife Act of 1992.

14351. *"Applicant" means any person or entity that applies for funding under this chapter.*

14352. "Cost-effective project" means a project that achieves an acceptable result at the most reasonable cost.

14353. "Fish" has the same meaning as that word is defined in Section 45 of the Fish and Game Code.

14354. "Fund" means the Safe Drinking Water, Fish, and Wildlife Fund.

14355. "Local water entity" means any joint powers authority, political subdivision of the state, or privately owned corporation, which sells, transfers, or distributes water to the public.

14356. "Project" means proposed facilities for the construction, improvement, or rehabilitation of the public water system, and may include water supply, treatment works, and all or part of a water distribution system, if necessary to carry out this chapter.

14357. "Public agency" means any city, county, city and county, district, joint powers authority, or other political subdivision of the state which owns or operates a public water system. For purposes of this chapter, a political subdivision of the state is a public agency.

14358. "Public water system" means a system for the provision to the public of piped water for human consumption, if the system has at least five service connections or regularly supplies water to at least 25 individuals. The term includes any water supply, treatment, storage, and distribution facilities under the control of the operator of the system.

~~14352. "Fund" means the Safe Drinking Water, Fish, and Wildlife Fund.~~

~~14353. "Project" means proposed facilities for the construction, improvement, or rehabilitation of the public water system, and may include water supply, treatment works, and all or part of a water distribution system, if necessary to carry out this chapter.~~

~~14354. "Public agency" means any city, county, city and county, district, joint powers authority, or other political subdivision of the state which owns or operates a public water system. For purposes of this chapter, a~~

~~political subdivision of the state is a public agency.~~

~~14355.~~

14359. "Safe drinking water standards" means those standards established pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code, as they may now or hereafter be amended.

14360. "Supplier" means any person, partnership, corporation, association, or other entity or political subdivision of the state which owns or operates a public water system.

~~14356. "Local water entity" means any joint powers authority, political subdivision of the state, or privately owned corporation, which sells, transfers, or distributes water to the public.~~

14361. (a) It is the intent of the Legislature that, based on existing patterns of water use, the implementation of this section will result in increases in monthly water fees charged to the average household which are not greater than the following:

(1) For the year 1993, fifty cents ($0.50).

(2) For the year 1994, one dollar and twenty-five cents ($1.25).

(3) For the year 1995, two dollars and fifty cents ($2.50).

(4) For the year 1996, three dollars and seventy-five cents ($3.75).

(5) For the year 1997, four dollars ($4).

(b) Except as provided in paragraph (4) of subdivision (d), an urban retail water supplier, whether publicly or privately owned, which annually delivers or receives 500 acre-feet or more of water shall pay an annual charge of ten dollars ($10) per acre-foot of water in 1993, thirty dollars ($30) per acre-foot of water in 1994, sixty dollars ($60) per acre-foot of water in 1995, ninety dollars ($90) per acre-foot of water in 1996, and one hundred dollars ($100) per acre-foot of water in 1997 and thereafter. *These charges shall apply to water delivered to retail customers. No charge is imposed on water delivered by one water supplier to another water supplier for*

redistribution to urban retail customers.

(c) The State Board of Equalization shall collect the charge imposed by subdivision (b). The State Board of Equalization may adopt guidelines or regulations to implement this section. The State Board of Equalization may review any water service records maintained by a public agency, supplier, or local water entity to determine the charges required to be collected pursuant to subdivision (b).

~~(d)~~ (1) Except as provided for in paragraph (3), ~~an urban retail water supplier may assess a charge on its retail customers to pay for the costs incurred pursuant to subdivision (b). It is the intent of the Legislature that any charge assessed pursuant to this paragraph is based on the volume of water consumed.~~ *a water supplier may collect from each customer reimbursement for the surcharge imposed pursuant to subdivision (b) based on the volume of water delivered to each customer.*

(2) Any urban retail water supplier which assesses a charge pursuant to paragraph (1) may include a statement with each water bill which is mailed to its customers which declares the specific amount of money added to the water bill in connection with the Safe Drinking Water, Fish, and Wildlife Act of 1992.

~~(3) No urban retail water supplier may assess a charge pursuant to paragraph (1) on its customers who are eligible for, and participating in, a low-income ratepayer assistance program established by the Public Utilities Commission pursuant to subdivision (g) of Section 739 of the Public Utilities Code, or a comparable program providing for residential ratepayer assistance established by the ratemaking authority of a public agency that furnishes electricity, gas, or water service to its retail customers.~~

~~(4) Notwithstanding subdivision (b), the amount collected from each urban retail water supplier by the State Board of Equalization shall be reduced by the amount not collected from water consumers pursuant to paragraph (3).~~

(3) The delivery of water to consumers who are

ensure that all domestic water supplies meet safe drinking water standards established under Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code, but that any additional capacity be financed by other sources unless excessive costs would be incurred by later expansion of the water system.

14363.9. The Legislature further finds and declares that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and it is in the interest of the people of the State of California to encourage the consolidation of the management or the facilities, or both, of small water systems to enable them to better address their water contamination problems.

14364. Any contract for a grant entered into pursuant to Section 14363 may include provisions as agreed by the contracting parties, and shall include, but not be limited to, all of the following provisions:

(a) An estimate of the reasonable cost of the project.

(b) An agreement to grant to the public agency, during the progress of construction or following completion of construction as agreed by the parties, an amount which equals the portion of construction costs found by the State Department of Health Services to be eligible for a state grant.

(c) An agreement by the public agency to do all of the following:

(1) Proceed expeditiously with, and complete, the project.

(2) Commence operation of the project upon completion of the project and properly operate and maintain the project pursuant to applicable provisions of law.

(3) Apply for, and make reasonable efforts to secure, federal assistance for the project.

(4) Secure approval of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of that

assistance available.

(5) Provide for payment of the public agency's share of the cost of the project, if any.

14364.1. Any contract for a loan entered into pursuant to Section 14363 may include provisions as agreed by the contracting parties, and shall include, but not be limited to, all of the following provisions:

(a) An estimate of the reasonable cost of the project.

(b) An agreement to loan to the local water entity, during the progress of construction or following completion of construction as agreed by the parties, an amount which equals the portion of project costs found by the State Department of Health Services to be eligible for a loan.

(c) An agreement by the local water entity to do all of the following:

(1) Proceed expeditiously with, and to complete, the project.

(2) Commence operation of the project upon completion of the project and to properly operate and maintain the project in accordance with applicable provisions of law.

(3) Apply for, and make reasonable efforts to secure, federal assistance for the project.

(4) Secure approval of the State Department of Health Services before applying for federal assistance in order to maximize the federal assistance available and best utilize the assistance available.

(5) Provide for payment of the local water entity's share of the cost of the project.

(6) Repay the principal of the loan, the interest on the principal which shall be equal to *no more than* the average interest rate earned by the Pooled Money Investment Account, and the administrative costs incurred by the State Department of Health Services and the department in administering the loan. *The department may reduce the interest rate to a level which makes it possible for the applicant to repay the loan, if the department determines the applicant is unable to repay the loan at the interest rate earned by the Pooled Money*

Investment Account.

14365. The State Director of Health Services shall prepare an annual report on all grant or loan commitments made, and grant or loan contracts entered into. The report shall be filed with the Legislature if it is in session, or if it is not in session, with the Joint Rules Committee. The report shall be filed on or before January 31 of each year for grant commitments made, or grant contracts entered into, by the State Director of Health Services during the previous calendar year.

14366. The State Department of Health Services may require, as a condition of approving the grant or loan, that the public agency or local water entity receiving the money merge with a larger agency, if in the agency's or entity's judgment, a merger is in the best interests of the customers of the agencies involved.

14370. Grant or loan funds shall be expended by the public agency or local water entity within three years of making the grant or loan. No grant or loan funds shall be expended by the public agency or local water entity unless the public agency or local water entity is able to demonstrate to the department, within one year of making the grant or loan, supported by an acceptable bid, that the amount to be expended for the project will be within 20 percent of the public agency's or local water entity's cost estimate for the project.

14370.4. *(a)* Criteria to be met to be eligible for consideration for funding under this chapter are to be established jointly by the department and the State Department of Health Services and shall include all of the following:

~~(a)~~

(1) All preliminary design work for a defined project that will enable the applicant to supply water that meets safe drinking water standards, including a cost estimate for the project, has been completed.

~~(b)~~

(2) A legal entity is in existence that has the authority to enter into contracts and incur debt on behalf of the community to be served and owns the public water

system or has the right to operate the public water system under a lease with a term of at least 20 years, unless otherwise authorized by the department. If the proposed project is funded by a loan under this chapter, the department may require the applicant to secure a lease for the full term of the loan if it exceeds 20 years.

~~(c)~~

(3) The applicant has applied for all necessary permits.

~~(d)~~

(4) The applicant holds all necessary water rights.

~~(e)~~

(5) The applicant has completed a preliminary review as required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the guidelines adopted pursuant thereto, and has included plans for compliance with that act in its preliminary plans for the project.

~~(f)~~

(6) The applicant has assembled sufficient financial data to establish its ability to complete the proposed project and the amount of debt financing it can undertake.

~~(g)~~

(7) The applicant has made reasonable efforts to secure federal or other financial assistance for the project.

(b) Planning and preliminary engineering studies conducted to define a project that will enable a public water system to meet safe drinking water standards may also be funded under this chapter. The objective of any study funded under this subdivision shall be to enable the applicant to meet all of the criteria necessary to be eligible for consideration for funding for a project under subdivision (a), and all reasonable costs associated with meeting those criteria may be funded pursuant to this subdivision.

14370.5. The State Department of Health Services shall notify local water entities and public agencies that may be eligible for funding for the purposes of this

chapter.

14370.6. (a) The State Department of Health Services, after public notice and hearing and with the advice of the department, shall, from time to time, adopt a priority list of proposed projects to be considered for funding under this chapter. In doing so, the State Department of Health Services shall determine if improvement or rehabilitation of a public water system is necessary to provide pure, wholesome, and potable water in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes. The State Department of Health Services shall adopt criteria for placing public water systems on a priority list for funding based upon the health effects of the current water quality. First priority shall be given to public water systems with the most critical public health problems.

(b) Consideration of an applicant's eligibility for funding shall initially be based on the priority list in effect at the time the application is received. If a new priority list is adopted during the time the application is under consideration, but before the applicant receives a letter of commitment, the department and the State Department of Health Services may consider the applicant's eligibility for funding based on either the old or new priority list.

(c) Notwithstanding subdivision (a) or any other provision of law, the priority list adopted by the State Department of Health Services pursuant to the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000)) in effect on January 1, 1992, may, at the option of the State Department of Health Services be used until the State Department of Health Services adopts a new priority list.

14370.7. Applications for funding under this chapter shall be made in the form and with the supporting material prescribed by the department and the State Department of Health Services.

14370.8. (a) The department and the State Department of Health Services shall determine, based on applications received, whether a particular applicant

meets the criteria to be eligible for consideration for project design and construction funding.

(b) If the applicant does not meet the criteria, it may be considered for planning and preliminary engineering study funding. Applicants successfully completing a study are eligible for consideration for project design and construction funding after their study is completed and they have met the criteria to be eligible for consideration for project design and construction funding.

14370.9. (a) No application for funding of project design and construction or planning and preliminary engineering studies shall be approved by the department unless and until the State Department of Health Services certifies, in writing, that the proposed study or project is necessary to enable the applicant to meet safe drinking water standards, and is reviewed for consistency with an adopted countywide consolidation plan, if any. The State Department of Health Services may refuse to certify a study or project if it determines that the purposes of this chapter may more economically and efficiently be met by means other than the proposed study or project. The department, upon the recommendation of the State Department of Health Services, may make reasonable allowance for future water supply needs and may provide for additional capacity when excessive costs would be incurred by later enlargement. The State Department of Health Services may limit funding to costs necessary to enable public agencies and local water entities to meet primary drinking water standards, as defined in Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code.

(b) With respect to applications for funding of project design and construction, the State Department of Health Services shall also certify, in writing, all of the following:

(1) Upon completion of the project, the applicant will be able to supply water that meets safe drinking water standards.

(2) The project is cost-effective.

(3) If the entire project is not to be funded under this chapter, the State Department of Health Services shall

specify which costs are eligible for funding.

14370.10. Project design and construction costs eligible for funding under this chapter shall be established by the department with the advice of the State Department of Health Services and may include any of the following:

(a) Reasonable costs for the construction, improvement, or rehabilitation of facilities of the public water system, which may include water supply, treatment works, and all or part of a water distribution system, if necessary to carry out the purposes of this chapter.

(b) Reasonable cost associated with the consolidation of water systems, including, but not limited to, reasonable facility fees, connection fees, or similar charges.

(c) Reasonable costs of purchasing water systems, water rights, or watershed lands.

(d) Operation and maintenance costs only to the extent they are used in the start up and testing of the completed project. All other operations and maintenance costs shall be the responsibility of the public agency or local water entity and may not be considered as part of the project cost.

(e) Reasonable costs of establishing eligibility for funding under this chapter that were incurred before the department entered into a commitment to fund the project under this chapter.

14370.11. Upon receipt of an application for funding pursuant to this chapter, the department shall propose to the applicant improvements to the applicant's water development distribution and utilization system which will conserve water in a cost-effective *and environmentally acceptable* manner. These improvements may include, but need not be limited to, leak detection and repair programs, valve repair and replacement, meter calibration and replacement, physical improvements to achieve corrosion control, distribution and installation of water conservation devices, fittings and fixtures, and other capital improvements which can be demonstrated to conserve

water in a cost-effective *and environmentally acceptable* manner. The department, the State Department of Health Services, and the applicant may agree to include these capital improvements in the grant or loan.

14370.12. (a) Project design and construction costs and planning and preliminary engineering studies may be funded under this chapter only by grants.

(b) At the request of the department, the Public Utilities Commission shall submit comments concerning the ability of a public agency or local water entity subject to its jurisdiction to finance the project from other sources.

14370.13. Not more than 35 percent of the money generated from the charge imposed pursuant to Section 14361 shall be used for grants. This amount shall include grants for all purposes authorized by this chapter. A grant may be made by the department only upon the specific approval of the Legislature.

14370.15. Total funding under this chapter of project design and construction costs may not exceed five thousand dollars ($5,000) per service connection unless otherwise authorized by the Legislature. This section does not preclude funding projects that exceed the five thousand dollars ($5,000) per service connection limit if funding for costs that exceed that amount can be obtained from other sources.

14370.16. An applicant who has executed a contract for funding under this chapter may not apply for funding for an additional study or project pursuant to this chapter in connection with the same public water system unless the additional study or project is necessitated by safe drinking water standard violations that came into existence after the initial contract was entered into or resulted from a change in safe drinking water standards occurring after the initial contract was entered into.

14370.17. Notwithstanding subdivision (b) of Section 14371, the administrative costs incurred by the State Department of Health Services and the department may not exceed 5 percent of the amount of the loan or grant.

14370.18. All funds received pursuant to loan

contracts entered into pursuant to this chapter shall be deposited into the Safe Drinking Water Subaccount for new loans.

~~14371. (a) The State Director of Health Services~~

14370.19. (a) Loans for project design and construction shall be repaid over a term not longer than the useful life of the project constructed or 35 years, whichever is shorter.

(b) Loans for planning and preliminary engineering studies shall be repaid over a term not to exceed five years, except that they may be consolidated with later loans for design and construction of the project proposed in the study, thereby extending the payback period of the loan for the study.

14370.20. (a) The maximum amount of funding permitted under this chapter for a single planning and preliminary engineering study is one hundred thousand dollars ($100,000).

(b) A single entity may apply for funding for more than one planning and preliminary engineering study if each proposed study concerns a separate identifiable public water system. If a single entity applies for funding for more than one study, the maximum amount of funding it is eligible for is seventy-five thousand dollars ($75,000) for each study, up to a maximum of three hundred seventy-five thousand dollars ($375,000) for each entity.

(c) If a study contemplates the consolidation of two or more separate public water systems, the maximum amount of funding permitted under this chapter is seventy-five thousand dollars ($75,000) for each water system, up to a maximum of three hundred seventy-five thousand dollars ($375,000) for each study contemplating a consolidated project.

14370.21. (a) The maximum amount of a loan permitted under this chapter for the design and construction of a single project is five million dollars ($5,000,000).

(b) A single entity may apply for funding for more than one design and construction project if each

proposed project concerns a separate identifiable public water system. If they do so, the maximum amount of grant permitted is three hundred thousand dollars ($300,000) for each water system, up to a maximum of one million five hundred thousand dollars ($1,500,000) for each entity. The maximum amount of loan permitted is five million dollars ($5,000,000) for each water system, up to a maximum of ten million dollars ($10,000,000) for each entity.

(c) If a project includes the consolidation of two or more separate public water systems, the maximum amount of a grant permitted under this chapter is three hundred thousand dollars ($300,000) for each water system, not to exceed one million five hundred thousand dollars ($1,500,000) for each consolidated project. The maximum amount of a loan permitted for a single project that includes the consolidation of two or more separate public water systems is five million dollars ($5,000,000) for each water system, not to exceed ten million dollars ($10,000,000) for each consolidated project.

(d) Total funding under this chapter of project design and construction costs, whether in the form of a loan or a grant, or both, may not exceed five thousand dollars ($5,000) per service connection unless otherwise authorized by the Legislature. This subdivision does not preclude funding projects that exceed the five thousand dollars ($5,000) per service connection limit if funding for costs that exceed that amount can be obtained from other sources.

(e) An applicant who has executed a contract for funding under this chapter may not apply for funding for an additional study or project in connection with the same public water system unless the additional study or project is necessitated by safe drinking water standard violations that came into existence after the initial contract was entered into or resulted from a change in safe drinking water standards occurring after the initial contract was entered into.

14370.22. (a) The department may enter into contracts with applicants for grants or loans for the

purposes set forth in this chapter. Any contract entered into pursuant to this section shall include only terms and conditions consistent with this chapter and the rules and regulations adopted under this chapter.

(b) The contract shall include all of the following terms and conditions that are applicable:

(1) An estimate of the reasonable cost of the project or study.

(2) An agreement by the department to loan or grant or loan and grant to the applicant an amount which equals the portion of the costs found by the department to be eligible for a state loan or grant. This agreement may provide for disbursement of funds during the progress of the study or construction or following completion of the study or construction as agreed by the parties.

(3) An agreement by the applicant to proceed expeditiously with the project or study.

(4) An agreement by the applicant to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law.

(5) In the case of a loan, an agreement by the applicant to repay the state, over a period not to exceed the useful life of the project or 35 years, whichever is shorter, or, in the case of a study, over a period not to exceed five years:

(A) The amount of the loan.

(B) The administrative fee as described in Section 14370.9.

(C) Interest on the principal, which is the amount of the loan plus the administrative fee.

(6) In the case of a project grant, an agreement by the supplier to maintain control of the water system for a period of 20 years, unless otherwise authorized by the department.

(c) The contract may include any of the following terms and conditions:

(1) An agreement by the supplier to adopt a fee structure which provides for the proper maintenance

and operation of the project and includes a sinking fund for repair and replacement of the facilities in cases where appropriate. The fee structure shall also provide for the repayment of the amount of the loan and of administrative fees, and for the payment of interest.

(2) If the entire project or study is not being funded pursuant to this chapter, the department may include a provision requiring the applicant to share the cost of the project or obtain funding from other sources.

(d) The department may require applicants to provide security for loan contracts.

14370.23. All funding received under this chapter shall be expended by the applicant within three years of the execution of the contract with the department. The three-year period may be extended with the approval of the department until five years after the date of the original contract, not including amendments, was executed.

14370.24. All principal and interest repaid to the state pursuant to any contract executed under this chapter shall be returned to the Safe Drinking Water Account in the revolving fund for new obligations.

14370.25. (a) The department, after public notice and hearing, and with the concurrence of health services, shall adopt rules and regulations necessary to carry out the purposes of this chapter and that will, in its judgment, effectively carry out this chapter in the public interest, to the end that the people of California are efficiently and economically provided supplies of pure, wholesome, and potable domestic water.

(b) Notwithstanding subdivision (a) or any other provision of law, existing rules and regulations not inconsistent with this chapter in effect upon the enactment of this chapter, may, at the option of the department, be utilized for purposes of implementing this chapter.

14370.26. The department shall prepare an annual report on all grant commitments made or grant contracts entered into pursuant to this chapter. The report shall be filed with the Legislature if it is in session or, if it is not

in session, with the Joint Rules Committee. The report shall be filed on or before July 1 of each year for grant commitments made or grant contracts entered into by the department during the previous calendar year.

14371. (a) The Secretary for Environmental Protection shall also use the money in the Safe Drinking Water and Groundwater Cleanup Account, upon appropriation by the Legislature, for all of the following purposes:

(1) To provide the state share of a removal or remedial action pursuant to paragraph (3) of subsection (c) of Section 9604 of Title 42 of the United States Code if the site is the subject of a final remedial action plan issued pursuant to Section 25356.1 of the Health and Safety Code.

(2) To pay all costs of a removal or remedial action incurred by the state, or by any local agency with the approval of the ~~State Director of Health Services~~ *Secretary for Environmental Protection*, in response to a release or threatened release of a hazardous substance at a site which is listed in the priority ranking of sites pursuant to Section 25356 of the Health and Safety Code and is the subject of a final remedial action plan issued pursuant to Section 25356.1 of the Health and Safety Code, to the extent that the costs are not paid by responsible parties or are not reimbursed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.). Wastewater reclamation costs shall be included as an allowable expenditure to clean up a site.

(3) To pay for site characterization of a release of hazardous substances, even if a remedial action plan has not been prepared, approved, adopted, or made final for that site.

(4) To pay for enforcement of site cleanup by responsible parties. Enforcement costs by state and local law enforcement agencies and state pollution control agencies are eligible for funding pursuant to this subdivision.

(5) To pay for development of new technology to alleviate and prevent the pollution of groundwater.

(6) To pay to reduce pollution from abandoned mines which degrade drinking water supplies, if that payment cannot be obtained to clean up the mine from present or former owners pursuant to state or federal law.

(7) To pay for recovery of costs from responsible parties pursuant to Article 6 (commencing with Section 25360) of Chapter 6.8 of the Health and Safety Code.

(8) To clean up groundwater basins which are contaminated by legally applied pesticides, if the ~~State Director of Health Services~~ *Secretary for Environmental Protection* determines that less than 50 percent of the pollution within the basin is caused by those pesticides, and if the cleanup is otherwise consistent with this chapter.

(b) Except for the purposes of paragraphs (4) and (5), not more than 10 percent of the money in the account shall be expended for purposes other than capital outlay to protect surface water and groundwater.

(c) Funds to clean up or to prevent the pollution of groundwater basins shall only be used within or nearby the boundaries of urban retail water suppliers who pay the charge required by Section 14361.

(d) "Site," for purposes of this section, means a site in which a hazardous substance release has entered, or may enter, groundwater or surface water used for drinking.

~~14372. (a) The State Director of Health Services shall use the money in the Fish and Wildlife Resource Account, upon appropriation by the~~

(e) At the end of each fiscal year, the Secretary for Environmental Protection shall enter into a contract with an independent firm to perform a review and analysis of the expenditures from the Safe Drinking Water and Groundwater Cleanup Account, with the exception of the funds spent on the Safe Drinking Water Loan and Grant Program. The review and analysis shall consider at least the following:

(1) Whether the restrictions with respect to capital outlay in this section have been met.

(2) The cost effectiveness of the cleanup and abatement programs undertaken pursuant to this section.

(3) Whether the other restrictions of this chapter and Section 25360 of the Health and Safety Code have been met.

(4) Any other means of improving the effectiveness of the program authorized by this section.

The results of the independent review and analysis shall be made available to the Chair of the Joint Legislative Budget Committee and the chairs of appropriate legislative committees.

14372. The money in the Fish and Wildlife Resources Account shall be used, upon appropriation by the Legislature, to restore or manage fish and water-dependent wildlife resources, including, but not limited to, the acquisition, restoration, development, and management of streams and rivers, wetlands, vernal pools, riparian habitat, and other aquatic habitat resources.

~~(b) The money in the Fish and Wildlife Resource Account shall not be used to pay for mitigation which is otherwise required by state or federal law, but the money in that account, upon appropriation by the Legislature, may be used to augment mitigation projects as long as the original mitigation costs to the project developer are not reduced.~~

(b) The money in the Fish and Wildlife Resource Account may not be used to pay for mitigation or statutory duties which are otherwise required by state or federal law, but the money may be used to restore fish and water dependent wildlife resources consistent with this section as long as the supplemental expenditures do not reduce, substitute for, or modify those mitigation and statutory duties owed by project developers and other proponents.

(c) Expenditure from the Fish and Wildlife Resource Account may be credited toward required expenditures from the Habitat Conservation Fund pursuant to Section 2787 of the Fish and Game Code, but only to the extent those expenditures are for the purposes expressed in

Sections 2786, 2787, and 2791 of the Fish and Game Code.

(d) Only the Department of Fish and Game, the Wildlife Conservation Board, the California Tahoe Conservancy, the Coastal Conservancy, the Santa Monica Mountains Conservancy, the Coachella Valley Mountains Conservancy, the Department of Parks and Recreation, the Department of Water Resources with respect to expenditures for urban stream restoration pursuant to Section 7048, and local agencies whose principal purposes include the protection and restoration of fish and wildlife habitat are eligible to receive funds from the Fish and Wildlife Resource Account. The Legislature may also allocate funds from the account to any state agency created after the effective date of this section which is primarily devoted to preservation of fish and wildlife resources.

14373. Consistent with subdivision (b) of Section 14371, the money in the Safe Drinking Water and Groundwater Cleanup Account and in the Fish and Wildlife Resource Account, upon appropriation by the Legislature, shall be used for costs incurred in carrying out this chapter.

14374. Nothing in this chapter confers on any water agency or individual a right to export groundwater from a basin in addition to the rights the water agency or individual already may have.

14375. Any public agency or local water entity receiving money pursuant to this chapter shall use the services of the California Conservation Corps and local community conservation corps to the extent practicable.

~~SEC. 6. Sections 1, 2, 3, 4, and 5 shall become~~

14375. On or before July 1 of each year, the Director of Water Resources shall adjust the dollar amount of loans provided for in this chapter in amounts which reflect the changes in the Construction Cost Index.

SEC. 7. (a) Notwithstanding Section 3571 of the Elections Code, or Section 88002 of the Government Code, or any other provision of law, the following shall appear as the official title and summary in the Voter's Pamphlet in connection with the text of SCA _____:

GOVERNMENTAL APPROPRIATIONS LIMIT. SCHOOL FUNDING. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Creates dedicated fund for Safe Drinking Water and Environmental protection. Amends state constitutional provisions limiting state appropriations. Excludes from appropriation limits funds raised due to new water fees. By allowing SB 959 to take effect, would allow new water fees of up to four dollars a month for an average household, to be spent to provide safe drinking water, clean up polluted underground water supplies, and restore fish and water-related wildlife. Modifies school funding provisions by excluding new water fees from constitutional requirements regarding school funding. Summary of Legislative Analyst's estimate of net state and local government fiscal impact. Because increase in state water fees become effective if Proposition _____ is adopted, would increase revenues for Safe Drinking Water Program, groundwater protection, and fish and wildlife restoration purposes by $30 million in 1992–93, and increasing amounts until 1997–98. Exempts such revenue from appropriation limit. Would have no effect on the minimum funding guarantee for education. Would have no impact on General Fund costs for K-14 education.

(b) Notwithstanding any other provision of law, the following shall appear as the title and summary in the official ballot for SCA _____:

GOVERNMENT APPROPRIATIONS LIMIT. SCHOOL FUNDING. SAFE DRINKING WATER FUND. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Creates Safe Drinking Water, Fish, and Wildlife special fund. Amends governmental appropriation limit and school funding guarantee provisions. Fiscal Impact: In 1992–1993, would increase revenues for Safe Drinking Water and Environmental purposes by $30 million, increase state's appropriation limit by same amount, and have no impact on state costs for K-14 education. Water

fees would be increased to $.50 per household per month in 1993, gradually increasing to an average of $4.00 per household per month in 1997 to pay for safe drinking water and environmental programs.

SEC. 8. Sections 1 to 6, inclusive, shall become operative only if the amendments to the California Constitution relating to the Safe Drinking Water, Fish, and Wildlife Act of 1992, as proposed by Senate Constitutional Amendment _____ of the 1991–92 Regular Session, are approved by the voters at the _____ election.

SEC. 9. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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BILL NUMBER: AB 2090

BILL TEXT

AMENDED IN SENATE SEPTEMBER 11, 1991
AMENDED IN SENATE AUGUST 19, 1991
AMENDED IN SENATE AUGUST 19, 1991
AMENDED IN ASSEMBLY JUNE 30, 1991
AMENDED IN ASSEMBLY JUNE 11, 1991
AMENDED IN ASSEMBLY MAY 21, 1991
AMENDED IN ASSEMBLY MAY 13, 1991

INTRODUCED BY Assembly Members Katz and Filante
(Principal coauthor: Senator Roberti)
(Coauthor: Assembly Member Nolan)

MARCH 8, 1991

An act to amend Sections 382, 1725, 1727, 1735, and 1736 of, to amend and renumber Article 1 (commencing with Section 1725), Article 2 (commencing with Section 1735), and Article 3 (commencing with Section 1740), of Chapter 10.5 of Part 2 of Division 2 of, to add Sections 1733, 1738, and 1739 to, to add Chapter 8 (commencing with Section 490) to Division 1 of, and to add Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1723) to Chapter 10.5 of Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2090, as amended, Katz. Water transfers.

(1) Existing law authorizes a permittee or licensee to temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the State Water Resources Control Board determines that the transfer meets prescribed conditions, including that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

This bill would delete that requirement and instead require that the

proposed change would not unreasonably affect the environment, as prescribed. The bill would require the board, upon receipt of notification of the proposed temporary change, to notify in writing the Department of Fish and Game and the appropriate county board of supervisors of the proposed transfer.

(2) Existing law authorizes the board to approve a petition for a long-term transfer, as defined, of water or water rights involving a change of point of diversion, place of use, or purpose of use if the board determines that the transfer meets certain conditions, including a requirement that the change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

This bill would delete that requirement and instead impose the requirements that the proposed long-term transfer would not unreasonably affect the environment, as prescribed, and would not unreasonably affect the overall economy of the county or the local community from which the water is being transferred. The bill would require the board, upon receipt of a petition for a long-term transfer or water rights, to notify in writing the department and the appropriate county board of supervisors of the proposed change. The bill would create the Aquatic Habitat Mitigation Account in the Fish and Game Preservation Fund and would require the department to mitigate long-term harm caused by transfers undertaken pursuant to these provisions, as prescribed.

(3) This bill would authorize the board, upon request of a holder of an appropriative right initiated prior to December 19, 1914, or a holder to a right to extract groundwater for beneficial use, to authorize a short-term or long-term change in the holder's point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights, subject to certain conditions. The bill would exclude prescribed water from these provisions.

(4) Existing law authorizes every local or regional public agency authorized by law to serve water to sell, lease, exchange, or otherwise transfer water that is surplus to the needs of the agency's water users for use outside the agency.

This bill would authorize those agencies to sell, lease, exchange, or otherwise transfer water, the use of which is foregone during the transfer period by an agency water user, for use inside or outside the agency. The bill would authorize a water user to transfer its water allocation received from a public water agency, as specified. The bill would exclude prescribed water from these provisions.

(5) This bill would require the board to prepare and submit a report on the feasibility of allowing the transfer of riparian water rights to the Governor and the Legislature by December 31, 1992.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 382 of the Water Code is amended to read:

382. (a) Notwithstanding any other provision of law, every local or

regional public agency authorized by law to serve water to persons or entities within the service area of the agency may sell, lease, exchange, or otherwise transfer (1) water that is surplus to the needs of the water users of the agency for use outside ~~of~~ the agency or (2) water, the use of which is foregone during the period of transfer by a water user of the agency, for use inside or outside the agency.

~~(b) The authority granted to local and regional public agencies by this chapter does not prohibit or restrict the transfer of water or water rights pursuant to authority granted public agencies by provisions of law other than this chapter.~~

(b) This chapter does not prohibit or restrict the transfer of water or water rights by local or regional public agencies pursuant to other provisions of law.

SEC. 2. Chapter 8 (commencing with Section 490) is added to Division 1 of the Water Code, to read:

CHAPTER 8. TRANSFERS OF PUBLIC AGENCY WATER ALLOCATIONS
Article 1. Temporary Transfers

490. This article applies to the temporary transfer of a water user's water allocation from a public agency.

490.1. (a) Any water user receiving water at retail from a public agency shall notify the agency, in writing, on or before April 1 or on or before a later date established by the public agency, of the user's intent to transfer a portion, or all, of the user's allocation of water for that calendar year.

(b) The water user shall specify in the notice all of the following:

(1) The terms of any contract with a federal agency to limit crop production and the terms of any other contract entered into by the water user affecting the use of the water or the land.

(2) The intended use of the water if the transfer does not occur.

(3) The amount of water proposed to be transferred.

(4) The minimum selling price per acre-foot.

(5) The date by which a decision is required to be made on the transfer to enable the user to make use of the water if the transfer is not made.

(6) Other data or evidence that, in the judgment of the water user, is relevant to the setting of terms and conditions.

490.2. (a) Upon receipt of the notice pursuant to Section 490.1, the public agency shall determine the user's allocation of water available for transfer. The allocation shall be based on either or both of the following:

(1) The user's consumptive use of water that would occur in the absence of the transfer.

(2) The user's average annual consumptive use of water estimated to have occurred from 1980 to 1990, inclusive.

(b) If the allocation is less than 10 acre-feet, the allocation available for transfer is zero.

(c) If the public agency is unable to quantify the allocation, the public agency shall describe the proposed method of allocation and shall prepare an estimate of the allocation, which may be based upon hydrologic conditions.

(d) The allocation is subject to adjustment by the public agency based on changes in ~~the water supply of the agency~~ its water supply, even

after the approval of the transfer, if any adjustment is generally applicable to all similarly situated customers of the agency whether they transfer water or not.

490.3. The public agency shall notify the water user, within 15 days of receipt of the notice described in Section 490.1, of all of the following:

(a) The allocation of water available for transfer, as determined pursuant to Section 490.2 or a reasonable estimate of that allocation.

(b) The terms and conditions to be imposed by the public agency, including the factual bases for the terms and conditions. The terms and conditions shall not be more stringent than the terms and conditions applied to transfers undertaken by the public agency. The public agency may impose terms and conditions which do any of the following:

(1) Require the water user to ~~pay the same amount to~~ continue to pay the water charges imposed by the public agency whether the water is used or transferred by the water user.

(2) Require that the transfer does not unreasonably interfere with the financial condition or operations of the public agency.

(3) Protect water supply contracts. Political subdivisions of the state shall make changes in contracts or ordinances, and other necessary changes, to facilitate transfers pursuant to this article by removing restrictions on place of use, purpose of use, or points of diversion, subject to restrictions necessary to protect the financial integrity and water supply operations of those political subdivisions.

(4) Protect its ability to comply with permit and license conditions established by regulatory agencies.

(c) Whether the agency is willing to transfer the allocation of water.

(d) Whether the agency is willing to buy the allocation of water.

490.4. (a) If the water user and the public agency are unable to agree on terms and conditions to be imposed on the transfer, the water user may request arbitration, in writing, in the manner specified in this section.

(b) The request shall be initiated by the filing of a request for arbitration, by the water user, with the public agency which specifies the terms and conditions proposed by the public agency which the water user deems unreasonable and specifies the user's proposed terms and conditions.

(c) Within five working days of the filing of the request for arbitration, the user and the public agency shall each choose a panel member. Failure by a party to select a panel member within five working days shall result in the imposition of the terms and conditions proposed by the other party. Failure by both parties to select a panel member within five working days shall be deemed to be a withdrawal of the water user's notice of intent to transfer submitted pursuant to Section 490.1.

(d) Within five days after the selection of the two panel members, the two panel members shall select a third panel member. If the two arbitrators are unable to agree upon the third arbitrator within five working days, the Secretary of the Resources Agency, or his or her designee, shall act as the third arbitrator.

(e) The public agency shall prepare an administrative record within 10 working days ~~of~~ after the receipt of the request for arbitration. The administrative record shall consist of both of the following:

(1) Each document presented to the decisionmaking authority of the public

agency relating to the setting of the terms and conditions.

(2) Each document relating to the deliberations and decision of the decisionmaking authority with regard to each term and condition proposed.

(f) (1) The panel shall review the administrative record. The panel may hold a public hearing prior to making its decision.

(2) If a hearing is held, the panel shall make a record of the hearing.

(g) Within 20 working days after the appointment of the third panel member, the panel shall notify the water user and the public agency of its determination. The notification and determination shall be in writing.

(h) The decision of the panel shall be final and not subject to review by a court, except that review may be undertaken pursuant to Section 1285 of the Code of Civil Procedure and the court shall be limited to vacating the decision of the panel based on one or more of the factors set forth in paragraphs (a) to (d), inclusive, of Section 1286.2 of the Code of Civil Procedure.

(i) The time limits specified in this section may be extended pursuant to an agreement of the water user and the public agency.

(j) The costs incurred by, or on behalf of, the panel shall be shared equally by the public agency and the water user, unless the panel determines all issues in favor of one party, in which case the costs shall be paid by the losing party.

490.5. The public agency and the water user may enter into an agreement in which the public agency agrees to transfer the user's allocation.

490.6. The public agency and the water user may enter into an agreement in which the public agency agrees to purchase the user's allocation.

490.7. If the water agency notifies the water user, pursuant to Section 490.3, that the agency chooses not to transfer the user's allocation and chooses not to purchase the user's allocation, or if the water user and the water agency are unable to enter into an agreement pursuant to Section 490.6, the water user may transfer the water pursuant to Article 3 (commencing with Section 1725) of Chapter 10.5 of Part 2 of Division 2, consistent with the terms and conditions which have been agreed to by the parties or determined by the panel.

490.8. If the water is not sold or transferred, the water user shall retain all rights to receive a water supply from the agency as if the user had not submitted a notice of intent to transfer pursuant to Section 490.1.

490.9. The public agency shall not lose any water right and the water user shall not lose any right to receive a future water supply from the public agency because of a transfer undertaken pursuant to this article.

490.10. This article does not apply to water within Inyo County or Mono County, or to Colorado River water within the Colorado River Hydrologic Basin as defined in the Department of Water Resources Bulletin No. 160-87.

490.11. The purchaser of any water transferred pursuant to this article shall pay the public agency for that water. Upon receipt of the payment, the public agency shall pay the water user after doing all of the following:

(1) Subtracting the agency's actual costs in effecting the transfer, if any.

(2) Adding the actual savings to the agency as a result of the transfer, if any.

(3) Subtracting any delinquent water charges, assessments, taxes, or other

fees which are owed by the transferor to the water agency.

(4) Subtracting the ~~taxpayer subsidy, if any, applicable to~~ subsidy, if any, paid by local taxpayers to the county or a local water district which lowers the cost of the water to be transferred, less the amount of the subsidy paid by the owner of the land from which the water was, or will be, transferred, computed on a 10-year average. The amount ascertained pursuant to this paragraph shall be deposited in the appropriate county or local water district fund.

490.12. Not more than 20 percent of the irrigated agricultural lands within the service area of a public agency that supplies water at retail may be fallowed as the result of a water transfer undertaken pursuant to this article, unless the public agency agrees to a larger percentage.

Article 2. Long-Term Transfers

495. (a) This article applies to the long-term transfer of that part of a water user's allocation from a public agency which the user conserves other than in connection with an agency-sponsored water conservation program.

(b) Any water user receiving water at retail from a public agency shall notify the agency and the board, in writing, of the user's intent to conserve water for the purposes of transferring the conserved water. The notice shall specify all of the following:

(1) The terms of any contract with a federal agency to limit crop production and the terms of any other contract entered into by the water user affecting the use of the water or the land.

(2) The intended use of the water if the transfer does not occur.

(3) The amount of water proposed to be conserved and transferred.

(4) The programs and equipment which will be used to effect the conservation.

(5) The life expectancy of the conservation equipment.

(6) Data which demonstrates that the conservation can be physically accomplished.

(7) The methods which enable the agency to determine that the conservation is being accomplished.

(8) The time period of the transfer.

(c) A water user within a public agency may seek the benefit of Section 1011 as if ~~they~~ the water user were a permittee or licensee.

(d) The water user who seeks the benefit of this section shall file any reports required by the board describing the extent and the amount of the reduction in water use due to water conservation efforts. Failure to file the reports shall deprive the water user of the benefits of this article.

(e) The water user shall continue to pay the water charges imposed by the public agency on the amount of water conserved and transferred pursuant to this article.

(f) The public agency shall not lose any water right and the water user shall not lose any right to receive a future water supply from the public agency because of a transfer undertaken pursuant to this article.

(g) This article does not apply to water within Inyo County or Mono County, or to Colorado River water within the Colorado River Hydrologic Basin as defined in the Department of Water Resources Bulletin No. 160-87.

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SEC. 3. Article 1 (commencing with Section 1720) is added to Chapter 10.5 of Part 2 of Division 2 of the Water Code, to read:

Article 1. General Provisions

1720. The Legislature finds and declares that water transfers are an important part of the solution to the state's water supply problems, along with conservation, reclamation, development, desalination, and other programs.

1720.2. In enacting Sections 1733 and 1738, it is the intent of the Legislature to create another transfer mechanism for the transfer of groundwater or water which is subject to an appropriative right initiated prior to December 19, 1914, but it is not the intent of the Legislature, to change the nature, quantity or priority of groundwater or water which is subject to an appropriative right initiated prior to December 19, 1914. It is not the intent of the Legislature to grant to the state any new authority to regulate groundwater or that water which is subject to an appropriative right initiated prior to December 19, 1914, except as to those right-holders who chose to undertake transfers pursuant to Section 1733 or 1738.

1720.3. This chapter does not affect Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 11460 to 11463, inclusive, and Sections 12201 and 12931.

1720.4. All proposed transfers of water undertaken pursuant to this chapter which require diversion through the facilities of the State Water Resources Development System (State Water Project) in the Sacramento-San Joaquin Delta, or which require a change in place of use from within to outside the service area of a State Water Project contractor, shall be submitted to the department for review and recommendations to the board to ensure both of the following:

(a) Transfers through the Sacramento-San Joaquin Delta will not diminish or adversely affect the ~~State Water Project water supplies or operations.~~ water supplies or operations of the State Water Project.

(b) There will be no adverse impact on the finances or the fiscal integrity of the State Water Project.

SEC. 4. Article 2 (commencing with Section 1723) is added to Chapter 10.5 of Part 2 of Division 2 of the Water Code, to read:

Article 2. Definitions

1723. Unless the context otherwise requires, the definitions of this article govern the construction of this chapter.

1723.1. "Consumptive use" means water which meets any of the following requirements:

(1) Has been consumed through evapotranspiration.

(2) Percolates to unusable groundwater.

(3) After initial beneficial use, flows without intermediary beneficial uses to saline bodies of water which do not have beneficial uses related to ~~fresh water~~ freshwater flows.

(4) Becomes part of a product, such as an agricultural crop.

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1723.2. "Critically overdrafted groundwater basins" are those groundwater basins that are identified as critically overdrafted in the Department of Water Resources Bulletin No. 118-80, p. 3, as revised December 24, 1982.

1723.3. An "overdrafted groundwater basin" is a groundwater basin that has a long-term overdraft problem, as determined by the board, but is not a critically overdrafted groundwater basin.

1723.4. "Water user" means one of the following:

(1) The landowner, if there is no tenant.

(2) The tenant if the tenant has sole control of the land and water.

(3) If paragraphs (1) and (2) are not applicable, the landowner and the tenant, subject to their contractual relationship.

SEC. 5. Article 1 (commencing with Section 1725) of Chapter 10.5 of Part 2 of Division 2 of the Water Code is amended and renumbered to read:

Article 3. Temporary Changes

SEC. 6. Section 1725 of the Water Code is amended to read:

1725. A permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

SEC. 7. Section 1727 of the Water Code is amended to read:

1727. (a) Upon receipt by the board of notification of a proposed temporary change, the board shall notify , in writing, the board of supervisors of the county from which the water is proposed to be transferred and the Department of Fish and Game of the proposed transfer.

(b) ~~(1)~~ The board shall make an evaluation sufficient to determine that the change would not do either of the following:

~~(A)~~

(1) Result in injury to any legal user of the water, during any potential hydrologic condition, through resulting significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the watershed of the transferor.

~~(B)~~

(2) Unreasonably affect the environment, including, but not limited to, fish, wildlife, wetlands, or other instream beneficial uses.

~~(2) (A) The~~

The board shall consider the recommendations of the Department of Fish and Game, including recommendations on the timing or method of transfer or diversion which would enhance fish and wildlife.

~~(B) The~~ The board shall make a written record of its reasons, if the board does not follow the recommendations of the Department of Fish and Game.

(c) Upon making the determination pursuant to subdivision (b), and finding that no injury or unreasonable effect would result, the board shall so notify the transferor, and those legal users of water identified pursuant to

subdivision (b), of its finding and the order approving the temporary change by personal delivery or registered mail. The temporary change shall take effect five days after the order is issued.

(d) If the board does not make the determination that no injury or unreasonable effect would result within 60 days after the receipt of the notice of a proposed temporary change, or within any extension of that period agreed to by the transferor, it shall so notify the transferor and those legal users of the water identified pursuant to subdivision (b), by personal delivery or registered mail, and shall fix a time and place for a hearing on the issues set forth in subdivision (b).

SEC. 8. Section 1733 is added to the Water Code, to read:

1733. Upon the request of a holder of an appropriative right initiated prior to December 19, 1914, or a holder of a right to extract groundwater for beneficial use, the board may authorize a temporary change pursuant to this article in the holder's point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights, subject to all of the following:

(a) The board shall determine that the amount of water to be used by the right holder, plus the amount to be transferred by the right holder, does not exceed the amount to which the right holder is entitled.

(b) (1) The board shall not approve a transfer of groundwater out of a critically overdrafted groundwater basin. The board shall not approve a transfer of surface water if the surface water is to be replaced by groundwater from a critically overdrafted groundwater basin.

(2) The board shall not approve a transfer of groundwater out of an overdrafted groundwater basin unless the transfer will lessen the amount of the overdraft that would have occurred without the transfer. The board shall not approve a transfer of surface water if the surface water is to be replaced by groundwater from an overdrafted groundwater basin unless the transfer will lessen the amount of the overdraft that would have occurred without the transfer.

(3) The board shall not approve a transfer which would subject a groundwater basin to a condition of overdraft.

(4) This subdivision does not affect programs or transfers involving surface water stored in the underground as part of a conjunctive use program.

(c) This section is not a limitation on any other provision of law authorizing transfers.

(d) The transferor of the water shall not lose any water right, other than that specified in the transfer agreement, because of a transfer undertaken pursuant to this section.

(e) This section does not apply to water within Inyo County or Mono County, or to Colorado River water within the Colorado River Hydrologic Basin as defined in the Department of Water Resources Bulletin No. 160-87.

(f) Notwithstanding Section 1729, the temporary transfer of water undertaken pursuant to this section is subject to the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 9. Article 2 (commencing with Section 1735) of Chapter 10.5 of Part 2 of Division 2 of the Water Code is amended and renumbered to read:

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Article 4. Long-Term Transfers

SEC. 10. Section 1735 of the Water Code is amended to read:

1735. (a) The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use.

(b) A long-term transfer is a transfer for any period in excess of one year.

(c) Upon receipt of a petition pursuant to this section, the board shall notify in writing the board of supervisors of the county from which the water is proposed to be transferred and the Department of Fish and Game of the proposed change.

SEC. 11. Section 1736 of the Water Code is amended to read:

1736. The board, after providing notice and opportunity for a hearing, may approve ~~such~~ a petition for a long-term transfer if the change would not do any of the following:

(a) Result in substantial injury to any legal user of water.

(b) ~~(1)~~ Unreasonably affect the environment, including, but not limited to, fish, wildlife, or other instream beneficial uses.

~~(2) The~~

The board shall consider the recommendations of the Department of Fish and Game, including recommendations on the timing or method of transfer or diversion which would enhance fish and wildlife.

~~(3) The~~

The board shall make a written record of its reasons if the board does not follow the recommendations of the Department of Fish and Game.

(c) Unreasonably affect the overall economy of the county or the local community from which the water is being transferred.

SEC. 12. Section 1738 is added to the Water Code, to read:

1738. Upon the request of a holder of an appropriative right initiated prior to December 19, 1914, or a holder of a right to extract groundwater for beneficial use, the board may authorize a long-term change pursuant to this article in the holder's point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights, subject to all of the following:

(a) The board shall determine that the amount of water to be used by the right holder, plus the amount to be transferred by the right holder, does not exceed the amount to which the right holder is entitled.

(b) (1) The board shall not approve a transfer of groundwater out of a critically overdrafted groundwater basin. The board shall not approve a transfer of surface water if the surface water is to be replaced by groundwater from a critically overdrafted groundwater basin.

(2) The board shall not approve a transfer of groundwater out of an overdrafted groundwater basin unless the transfer will lessen the amount of the overdraft that would have occurred without the transfer. The board shall not approve a transfer of surface water if the surface water is to be replaced by groundwater from an overdrafted groundwater basin unless the transfer will lessen the amount of the overdraft that would have occurred without the transfer.

(3) The board shall not approve a transfer which would subject a

groundwater basin to a condition of overdraft.

(4) This subdivision does not affect programs or transfers involving surface water stored in the underground as part of a conjunctive use program.

~~(c) The local agency shall not approve a final map for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) for any parcel of land from which water or water rights have been transferred pursuant to this section, for the duration of the transfer period, unless the landowner is able to verify that he or she has fully replaced the water.~~

~~(d)~~

(c) Not more than 20 percent of the irrigated agricultural lands within the service area of a public agency that supplies water at retail may be fallowed as the result of a water transfer undertaken pursuant to this section.

~~(e)~~

(d) This section is not a limitation on any other provision of law authorizing transfers.

~~(f)~~

(e) The transferor of the water shall not lose any water right, other than that specified in the transfer agreement, because of a transfer undertaken pursuant to this section.

~~(g)~~

(f) This section does not apply to water within Inyo County or Mono County, or to Colorado River water within the Colorado River Hydrologic Basin as defined in the Department of Water Resources Bulletin No. 160-87.

SEC. 13. Section 1739 is added to the Water Code, to read:

1739. (a) The Legislature finds and declares that many of the state's ~~fresh-water~~ freshwater aquatic habitats are under severe long-term stress, primarily due to human-caused changes in the physical environment. The Legislature hereby further finds and declares that the transfer of water undertaken pursuant to this article may have adverse effects upon the aquatic environment that will be difficult to quantify especially in the aggregate and over time. By enacting this section, the Legislature intends to assist in the mitigation of these adverse effects.

(b) The transferee shall do one of the following:

(1) Make available 10 percent of the amount of the water approved for transfer to the Department of Fish and Game.

(2) With the consent of the Department of Fish and Game, pay 10 percent of the cost paid for the water to be transferred into the Aquatic Habitat Mitigation Account in the Fish and Game Preservation Fund, which is hereby created.

(c) The transferee shall also provide the Department of Fish and Game a reasonable opportunity to purchase up to 10 percent of the amount of water

proposed to be transferred pursuant to this article at the same cost as paid by the transferee.

(d) The Department of Fish and Game shall use any water provided pursuant to this section, or money deposited into the Aquatic Habitat Mitigation Account in the Fish and Game Preservation Fund pursuant to paragraph (2) of subdivision (b), to mitigate long-term aquatic harm caused by transfers undertaken pursuant to this article. The first priority of the mitigation work is to mitigate damage in the watershed of the transferor.

SEC. 14. Article 3 (commencing with Section 1740) of Chapter 10.5 of Part 2 of Division 2 of the Water Code is amended and renumbered to read:

Article 5. Transfer of Decreed Rights

SEC. 15. The board shall prepare a report on the feasibility of allowing the transfer of riparian water rights, including how the board would quantify the amounts of water available for transfer. The board shall submit the report, which shall include recommendations relating to proposed legislation, to the Governor and the Legislature by December 31, 1992.

SEC. 16. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.