

DIVISION 1. GENERAL STATE POWERS OVER WATER

[100. - 540.]

(Division 1 enacted by Stats. 1943, Ch. 368.)

CHAPTER 1. GENERAL STATE POLICY [100. - 113.]

(Chapter 1 enacted by Stats. 1943, Ch. 368.)

§ 100. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to

such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. (Enacted by Stats. 1943, Ch. 368.)

§ 100.5. It is hereby declared to be the established policy of this state that conformity of a use, method of use, or method of diversion of water with local custom shall not be solely determinative of its reasonableness, but shall be considered as one factor to be weighed in the determination of the reasonableness of the use, method of use, or method of diversion of water, within the meaning of Section 2 of Article X of the California Constitution. (Added by Stats. 1980, Ch. 933, Sec. 1.)

§ 101. Riparian rights in a stream or watercourse attach to, but to no more than so much of the flow thereof as may be required or used consistently with this and the next preceding section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing in this or the next preceding section shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which his land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which he is lawfully entitled. (Enacted by Stats. 1943, Ch. 368.)

§ 102. All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law. (Enacted by Stats. 1943, Ch. 368.)

§ 103. In the enactment of this code the Legislature does not intend thereby to effect any change in the law relating to water rights. (Enacted by Stats. 1943, Ch. 368.)

§ 104. It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection. (Enacted by Stats. 1943, Ch. 368.)

§ 105. It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit. (Enacted by Stats. 1943, Ch. 368.)

§ 106. It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.

(Enacted by Stats. 1943, Ch. 368.)

§ 106.3. (a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

(b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.

(c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).

(d) This section shall not apply to water supplies for new development.

(e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.

(Added by Stats. 2012, Ch. 524, Sec. 1. Effective January 1, 2013.)

§ 106.5. It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses, but that no municipality shall acquire or hold any right to waste water, or to use water for other than municipal purposes, or to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by others subject to the rights of the municipality to apply such water to municipal uses as and when necessity therefor exists.

(Added by Stats. 1945, Ch. 1344.)

§ 106.7. (a) It is hereby declared to be the established policy of this state to support and encourage the development of environmentally compatible small hydroelectric projects as a renewable energy source, provided that the projects do not result in surface disturbances within the following sensitive areas:

(1) Any component of the California Wild and Scenic Rivers System or the National Wild and Scenic Rivers System.

(2) Any river designated for study pursuant to Section 5(a) of the National Wild and Scenic River Act (16 U.S.C. 1276(a)). This paragraph shall not apply to any river which, upon the completion of the study, is not included in the National Wild and Scenic Rivers System.

(3) Any state or federally designated wilderness area.

(4) Any areas designated as a “Critical Condor Habitat” by the United States Fish and Wildlife Service.

(b) State agencies shall not approve small hydroelectric development within the sensitive areas specified in subdivision (a).

(c) Significant adverse impacts associated with small hydroelectric projects shall be identified by those agencies responsible for the preparation of the environmental impact document.

(d) Emphasis on the development of small hydroelectric power generating facilities which are “qualifying small power production facilities” under Section 210 of the Public Utilities Regulatory Policies Act of 1978, shall be on existing dams, diversions, and canals with a sufficient drop so that power may be efficiently generated without significant environmental effects.

(e) For hydroelectric power generating facilities, the applicant shall demonstrate that project revenues will exceed project costs, including the cost of mitigation measures over the life of the project.

(f) Subdivisions (d) and (e) do not apply to projects with a nameplate capacity of less than 100 kilowatts.

(Amended by Stats. 1986, Ch. 807, Sec. 1.)

§ 107. The declaration of the policy of the State in this chapter is not exclusive, and all other or further declarations of policy in this code shall be given their full force and effect.

(Enacted by Stats. 1943, Ch. 368.)

§ 108. It is hereby declared to be the established policy of this State that in the development and completion of any general or co-ordinated plan prepared and published by the Department of Water Resources or any predecessor thereof or successor thereto, all uses, including needs of the area in which the water originates, of water shall be given consideration.

Whenever the Legislature authorizes the construction or acquisition by the State of any project which will develop water for use outside the watershed in which it originates, the Legislature shall at the same time consider the authorization and the construction or acquisition of such other works as may be necessary to develop water to satisfy such of the reasonable ultimate requirements of such watershed as may be needed at the time the export project is authorized or as will be needed within a reasonable time thereafter. The authorization with respect to such additional works may provide for state acquisition or construction, in whole or in part, of any such additional works, or financial assistance to other entities in connection with the acquisition or construction of such works, or a combination thereof.

(Added by Stats. 1959, Ch. 2063.)

§ 109. (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water and transferability of such rights. It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import.

(b) The Legislature hereby directs the Department of Water Resources, the State Water Resources Control Board, and all other appropriate state agencies to encourage voluntary transfers of water and water rights, including, but not limited to, providing technical assistance to persons to identify and implement water conservation measures which will make additional water available for transfer.

(Amended by Stats. 1982, Ch. 867, Sec. 1.)

* * *

§ 113. It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on the best available science.

(Added by Stats. 2014, Ch. 346, Sec. 2. Effective January 1, 2015.)

* * *

Article 3. State Water Resources Control Board [174. - 189.5.]

(Heading of Article 3 amended by Stats. 1967, Ch. 284.)

§ 174. (a) The Legislature hereby finds and declares that in order to provide for the orderly and efficient administration of the water resources of the state, it is necessary to establish a control board that shall exercise the adjudicatory and regulatory functions of the state in the field of water resources.

(b) It is also the intention of the Legislature to combine the water rights, water quality, and drinking water functions of the state government to provide for coordinated consideration of water rights, water quality, and safe and reliable drinking water.

(c) This section shall become operative on July 1, 2014.

(Repealed (in Sec. 181) and added by Stats. 2014, Ch. 35, Sec. 182. Effective June 20, 2014. Section operative July 1, 2014, by its own provisions.)

§ 175. (a) There is in the California Environmental Protection Agency the State Water Resources Control Board consisting of five members appointed by the Governor. One of the members appointed shall be an attorney admitted to

practice law in this state who is qualified in the fields of water supply and water rights, one shall be a registered civil engineer under the laws of this state who is qualified in the fields of water supply and water rights, one shall be a registered professional engineer under the laws of this state who is experienced in sanitary engineering and who is qualified in the field of water quality, and one shall be qualified in the field of water quality. One of the above-appointed persons, in addition to having the specified qualifications, shall be qualified in the field of water supply and water quality relating to irrigated agriculture. One member shall not be required to have specialized experience.

(b) Each member shall represent the state at large and not any particular portion thereof and shall serve full time. The board shall, to the extent possible, be composed of members from different regions of the state. The appointments made by the Governor shall be subject to confirmation by the Senate in accordance with Article 2 (commencing with Section 1770) of Chapter 4 of Division 4 of Title 1 of the Government Code.

(Amended by Stats. 2010, Ch. 288, Sec. 2. Effective January 1, 2011.)

§ 175.5. (a) A member of the board shall not participate in any board action pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 in which the board member has a disqualifying financial interest in the decision within the meaning of Section 87103 of the Government Code.

(b) A board member shall not participate in any proceeding before any regional board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon the request of any person, or on the Attorney General's own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

(Amended by Stats. 2012, Ch. 39, Sec. 115. Effective June 27, 2012.)

§ 176. The annual salary of the members of the board is provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. Each member of the board shall receive the necessary traveling and other expenses incurred by him in the performance of his official duties out of appropriations made for the support of the board. When necessary the members of the board may travel within or without the State.

(Added by renumbering Section 186 by Stats. 1957, Ch. 1932.)

§ 177. All members of the board shall be appointed for terms of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

(Amended by Stats. 1983, Ch. 40, Sec. 2. Effective May 26, 1983.)

§ 178. The members of the board may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty or corruption or incompetency.

(Added by renumbering Section 188 by Stats. 1957, Ch. 1932.)

§ 179. The board succeeds to and is vested with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department and Director of Public Works, the Division of Water Resources of the Department of Public Works, the State Engineer, the State Water Quality Control Board, or any officer or employee thereof, under Division 2 (commencing with Section 1000), except Part 4 (commencing with Section 4000) and Part 6 (commencing with Section 5900) thereof; and Division 7 (commencing with Section 13000) of this code, or any other law under which permits or licenses to appropriate water are issued, denied, or revoked or under which the functions of water pollution and quality control are exercised.

(Amended by Stats. 1967, Ch. 284.)

§ 179.6. The board, or representatives authorized by the board to do so, may call, conduct or attend conferences or hearings, official or unofficial, within or without this state, or otherwise participate in such conferences or hearings with interested persons, agencies or officers, of this or any other state, or with the Congress of the United States, congressional committees, or officers of the federal government, concerning any matter within the scope of the power and duties of the board.

(Added by Stats. 1967, Ch. 284.)

§ 179.7. As to any matter involving the United States, its departments or agencies, which is within the scope of the power and duties of the board, the board may represent the interest of the state or any county, city, state agency or public district upon their request, and to that end may correspond, confer and cooperate with the United States, its departments or agencies, and where necessary the board members, or authorized representatives, may travel either within or without the state.

(Added by Stats. 1967, Ch. 284.)

§ 181. The board shall maintain its headquarters at Sacramento and may establish branch offices in such parts of the state as the board deems necessary. The board shall hold meetings at such times and at such places as shall be determined by it. The Governor shall designate the time and place for the first

meeting of the board. Three members of the board shall constitute a quorum for the purpose of transacting any business of the board.

(Amended by Stats. 1967, Ch. 1656.)

§ 182. The Governor shall designate the chairperson of the board from the membership of the board. The person so designated shall hold the office of chairperson at the pleasure of the Governor. The board shall elect a vice chairperson.

(Amended by Stats. 2010, Ch. 288, Sec. 3. Effective January 1, 2011.)

§ 183. The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in it, and for such purposes has the powers conferred upon heads of departments of the state by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

Any hearing or investigation by the board may be conducted by any member upon authorization of the board, and he shall have the powers granted to the board by this section, but any final action of the board shall be taken by a majority of all the members of the board, at a meeting duly called and held.

All hearings held by the board or by any member thereof shall be open and public

(Amended by Stats. 1971, Ch. 1288.)

§ 184. The Department of Water Resources shall have an interest and may appear as a party in any hearing held by the board and may commence or appear in any judicial proceeding brought to inquire into the validity of any action, order, or decision of the board.

(Added by renumbering Section 194 by Stats. 1957, Ch. 1932.)

§ 185. The board shall adopt rules for the conduct of its affairs in conformity, as nearly as practicable, with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1982, Ch. 454, Sec. 184.)

§ 186. (a) The board shall have any powers, and may employ any legal counsel and other personnel and assistance, that may be necessary or convenient for the exercise of its duties authorized by law.

(b) For the purpose of administration, the board shall organize itself, with the approval of the Governor, in the manner it deems necessary properly to segregate and conduct the work of the board. The work of the board shall be divided into at least two divisions, known as the Division of Water Rights and the Division of Water Quality. The board shall appoint a deputy director or division chief for each division, who shall supervise the work of the division and act as technical adviser to the board on functions under his or her jurisdiction.

(c) The Attorney General shall represent the board, or any affected regional water quality control board, or both the board and the regional board, and the state in litigation concerning affairs of the board, or a regional board, or both, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board, the regional board, or both, with the written consent of the board and the other state agency, the board may contract for the services of private counsel to represent the board, the regional board, or both, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board, the regional board, or both. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board. The legal counsel of the board shall advise and furnish legal services, except representation in litigation, to the regional boards upon their request.

(Amended by Stats. 2010, Ch. 288, Sec. 4. Effective January 1, 2011.)

§ 187. The board, regional water quality control boards, the Department of Water Resources, and other state agencies shall, to the fullest extent possible, exchange records, reports, material, and any other information relating to water, water rights, water pollution or quality, or any areas of mutual concern, to the end that unnecessary duplication of effort may be avoided.

(Amended by Stats. 1967, Ch. 284.)

§ 188. The board may expend money appropriated for the administration of the laws the administration of which is committed to the board.

Such expenditures by the board shall be made in accordance with law in carrying on the work for which the appropriations were made.

(Added by Stats. 1957, Ch. 1932.)

§ 188.5. The board shall publish biennial progress reports relating to the activities of the board and California regional water quality control boards.

(Amended by Stats. 1969, Ch. 482.)

§ 189. (a) There is hereby established the Office of Sustainable Water Solutions within the state board, which may be administered by the state board as a separate organizational unit or within the state board's divisions or offices.

(b) The purpose of the office is to promote permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services. In furtherance of this purpose, the office may take, but is not limited to, all of the following actions:

(1) Coordinating with and providing assistance to small drinking water systems, wastewater treatment systems, and disadvantaged communities without drinking water or wastewater treatment systems.

(2) Promoting and facilitating regional drinking water and wastewater projects.

(3) Promoting and facilitating regional solutions, including consolidation of existing water districts, expansion of existing water districts to serve communities unserved by public water systems and wastewater treatment systems, and extension of services to underserved communities and disadvantaged communities.

(4) Advancing the delivery of affordable, safe drinking water to disadvantaged communities throughout the state.

(5) Providing technical assistance to disadvantaged communities and small drinking water systems and wastewater systems, including grant application assistance, outreach and education in vulnerable communities, financial management support, and facilitation of discussions within and between communities.

(Added by Stats. 2015, Ch. 2, Sec. 6. Effective March 27, 2015.)

§ 189.5. (a) This section shall be known, and may be cited, as the Low-Income Water Rate Assistance Act.

(b) No later than January 1, 2018, the board, in collaboration with the State Board of Equalization and relevant stakeholders, shall develop a plan for the funding and implementation of the Low-Income Water Rate Assistance Program, which shall include all of the following elements:

(1) A description of the method for collecting moneys to support and implement the program, including a discussion of any constitutional restrictions on public water agency ratesetting.

(2) A description of the mechanism for providing funding assistance under the program through either direct credits to enrollees in the program or reimbursements to water service providers, including a method for verifying income eligibility of low-income ratepayers, clarification of the role of the Public Utilities Commission and water utilities in determining and verifying customer eligibility, and recommendations regarding the structure of the program, particularly whether it will be administered by the state or locally administered.

(3) A description of the method to be used to determine the amount of moneys that may need to be collected from water ratepayers to fund the program. The plan shall include a set of recommendations and best practices of cost-savings measures to ensure water utilities are demonstrating whether and how they are keeping rates low. This section does not authorize the imposition of a state charge to fund the program.

(c) In developing the plan required in subdivision (b), the board may consider the existing rate assistance programs authorized by the Public Utilities Commission for investor-owned water utilities pursuant to Section 739.8 of the Public Utilities Code.

(d) The plan may also include recommendations for other cost-effective methods of offering assistance to low-income water customers besides rate assistance, including billing alternatives, installation of water conservation devices, and leak repair. In considering other methods, the board may consider the Public Utilities Commission’s “Assessment of Water Utility Low-Income Assistance Programs.”

(e) (1) No later than February 1, 2018, the board shall report to the Legislature on its findings regarding the feasibility, financial stability, and desired structure of the program, including any recommendations for legislative action that may need to be taken.

(2) The requirement for submitting a report imposed under this subdivision is inoperative on February 1, 2022, pursuant to Section 10231.5 of the Government Code.

(3) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(f) For purposes of this section, the following terms have the following meanings:

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

(2) “Low-income” means a household with income that is equal to or no greater than 200 percent of the federal poverty guideline level. For one-person households, program eligibility shall be based on two-person household guideline levels.

(3) “Program” means the Low-Income Water Rate Assistance Program. *(Added by Stats. 2015, Ch. 662, Sec. 1. Effective January 1, 2016.)*

* * *

CHAPTER 2.5. MISCELLANEOUS POWERS OF DEPARTMENT [205. - 347.]

(Heading of Chapter 2.5 added by Stats. 1956, 1st Ex. Sess., Ch. 52.)

* * *

Article 3. Proceedings to Prevent Waste or Unreasonable Use [275. - 275.]

(Article 3 enacted by Stats. 1943, Ch. 368.)

§ 275. The department and board shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

(Amended by Stats. 1971, Ch. 794.)

* * *