
DIVISION 2. WATER [1000. - 5976.]

(Division 2 enacted by Stats. 1943, Ch. 368.)

PART 1. GENERAL PROVISIONS [1000. - 1126.2.]

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

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CHAPTER 2. ADMINISTRATIVE PROVISIONS GENERALLY [1050. - 1060.]

(Chapter 2 enacted by Stats. 1943, Ch. 368.)

§ 1050. This division is hereby declared to be in furtherance of the policy contained in Section 2 of Article X of the California Constitution and in all respects for the welfare and benefit of the people of the state, for the improvement of their prosperity and their living conditions, and the board and the department shall be regarded as performing a governmental function in carrying out the provisions of this division.

(Amended by Stats. 1979, Ch. 373.)

§ 1051. The board for the purpose of this division may:

(a) Investigate all streams, stream systems, portions of stream systems, lakes, or other bodies of water.

(b) Take testimony in regard to the rights to water or the use of water thereon or therein.

(c) Ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this State.

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

§ 1051.5. In furtherance of its powers and duties under Parts 2 (commencing with Section 1200) and 3 (commencing with Section 2000) of this division, the board may supervise trial distribution of water in accordance with agreements and court orders therefor.

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

§ 1052. (a) The diversion or use of water subject to this division other than as authorized in this division is a trespass.

(b) The Attorney General, upon request of the board, shall institute in the superior court in and for any county where the diversion or use is threatened, is occurring, or has occurred an action for the issuance of injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction.

(c) Any person or entity committing a trespass as defined in this section may be liable in an amount not to exceed the following:

(1) If the unauthorized diversion or use occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or

critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, the sum of the following:

(A) One thousand dollars (\$1,000) for each day in which the trespass occurs.

(B) Two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's water rights.

(2) If the unauthorized diversion or use is not described by paragraph (1), five hundred dollars (\$500) for each day in which the unauthorized diversion or use occurs.

(d) Civil liability for a violation of this section may be imposed by the superior court or the board as follows:

(1) The superior court may impose civil liability in an action brought by the Attorney General, upon request of the board, to impose, assess, and recover any sums pursuant to subdivision (c). In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(2) The board may impose civil liability in accordance with Section 1055.

(e) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(f) The remedies prescribed in this section are cumulative and not alternative.

(Amended by Stats. 2014, Ch. 3, Sec. 9. Effective March 1, 2014.)

§ 1053. A full and accurate record of business or acts performed or of testimony taken by the board and the department in pursuance of the provisions of this division shall be kept and be placed on file in the office of the board or the department, as the case may be.

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

§ 1054. The board and the department may certify to all of their official acts and may certify copies of all official documents and orders filed in their respective offices. For the purpose of making such certifications, the board and the department may adopt seals.

(Amended by Stats. 1957, Ch. 947.)

§ 1055. (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052, Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2, or Section 5107. The complaint shall allege the act or failure to

act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail. The complaint shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served and that the board may adopt an order setting administrative civil liability based on the allegations set forth in the complaint without a hearing if the party does not sign a written request for a hearing that is delivered to, or received by mail by, the board within 20 days after the date the party was served. The hearing shall be before the board or a member of the board, in accordance with Section 183.

(c) The board, after any necessary hearing, may adopt an order setting administrative civil liability, or determining that a liability shall not be imposed.

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

(Amended by Stats. 2015, Ch. 683, Sec. 43. Effective January 1, 2016.)

§ 1055.2. A person or entity shall not be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under Section 1052 or Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2 for the same act or failure to act.

(Amended by Stats. 2010, Ch. 288, Sec. 6. Effective January 1, 2011.)

§ 1055.3. In determining the amount of civil liability, the board shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(Added by Stats. 1987, Ch. 756, Sec. 5.)

§ 1055.4. After the time for review under Chapter 4 (commencing with Section 1120) has expired, the board may apply to the clerk of the appropriate court for a judgment to collect the administrative civil liability imposed in accordance with Section 1055. The application, which shall include a certified copy of the board action, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(Added by Stats. 1997, Ch. 323, Sec. 1. Effective January 1, 1998.)

§ 1056. The board and the department may fix reasonable charges for publications issued under their respective authorities.

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

§ 1057. All fees charged and collected under this chapter shall be paid, at least once each month, accompanied by a detailed statement thereof, into the State Treasury.

(Amended by Stats. 1963, Ch. 330.)

§ 1058. The board may make such reasonable rules and regulations as it may from time to time deem advisable in carrying out its powers and duties under this code.

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

§ 1058.5. (a) This section applies to any emergency regulation adopted by the board for which the board makes both of the following findings:

(1) The emergency regulation is adopted to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.

(2) The emergency regulation is adopted in response to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions.

(b) Notwithstanding Sections 11346.1 and 11349.6 of the Government Code, any findings of emergency adopted by the board, in connection with the adoption of an emergency regulation under this section, are not subject to review by the Office of Administrative Law.

(c) An emergency regulation adopted by the board under this section may remain in effect for up to 270 days, as determined by the board, and is deemed repealed immediately upon a finding by the board that due to changed conditions it is no longer necessary for the regulation to remain in effect. An emergency regulation adopted by the board under this section may be renewed if the board determines that the conditions specified in paragraph (2) of subdivision (a) are still in effect.

(d) In addition to any other applicable civil or criminal penalties, any person or entity who violates a regulation adopted by the board pursuant to this section is guilty of an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.

(e) (1) Notwithstanding subdivision (b) of Section 1551, subdivision (d) of Section 1845, and subdivision (f) of Section 1846, a civil liability imposed under Chapter 12 (commencing with Section 1825) of Part 2 of Division 2 by the board

or a court for a violation of an emergency conservation regulation adopted pursuant to this section shall be deposited, and separately accounted for, in the Water Rights Fund. Funds deposited in accordance with this subdivision shall be available, upon appropriation, for water conservation activities and programs.

(2) For purposes of this subdivision, an “emergency conservation regulation” means an emergency regulation that requires an end user of water, a water retailer, or a water wholesaler to conserve water or report to the board on water conservation. Water conservation includes restrictions or limitations on particular uses of water or a reduction in the amount of water used or served, but does not include curtailment of diversions when water is not available under the diverter’s priority of right or reporting requirements related to curtailments.

(Amended by Stats. 2015, Ch. 27, Sec. 13. Effective June 24, 2015.)

§ 1059. The board and the department, as to matters under each of their respective jurisdictions, may designate one or more of their employees who shall have authority to certify under their respective seals all copies of orders, applications, permits, licenses, certificates, and other records under this division, and to attest all records, transcripts, evidence, and other original documents which it is necessary so to authenticate.

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

§ 1060. (a) All fees collected by the State Water Resources Control Board or by a California regional water quality control board, and deposited in the State Treasury, except funds collected under Part 3 (commencing with Section 2000) of this division, funds received for trial distribution expenses in connection with the administration of Section 1051.5, and deposits and payments made pursuant to Section 5007, shall be credited to the appropriation for the support of the board which is current at the time of the deposit of such fees in the State Treasury.

(b) Money deposited with or paid to the board pursuant to Section 1051.5 or 5007 and deposited by the board in the State Treasury is available for expenditure by the board in accordance with those sections without regard to fiscal years and irrespective of the provisions of Section 16304 of the Government Code, and any unused balance shall be refunded by the board to the person entitled thereto.

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

CHAPTER 3. WITNESSES AND PRODUCTION OF EVIDENCE [1075. - 1106.]

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

Article 1. Definitions [1075. - 1076.]

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

§ 1075. As used in this chapter, “proceeding” means any inquiry, investigation, hearing, ascertainment, or other proceeding ordered or undertaken by the board pursuant to this code.

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

§ 1076. As used in this chapter, “evidence” means any paper, book, map, account, or document.

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

Article 2. Attendance and Fees [1080. - 1086.]

(Article 2 enacted by Stats. 1943, Ch. 368.)

§ 1080. The board may administer oaths and issue subpoenas for the attendance and giving of testimony by witnesses and for the production of evidence in any proceeding in any part of the State.

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

§ 1081. Each witness who appears by order of the board shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases, which shall be paid by the party at whose request the witness is subpoenaed.

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

§ 1082. When any witness who has not been required to attend at the request of any party is subpoenaed by the board his fees and mileage shall be paid from the funds appropriated for the use of the board and available for the purpose.

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

§ 1083. Any witness subpoenaed, except one whose fees and mileage are payable from the funds of the board, may, at the time of service, demand the fees to which he is entitled for travel to and from the place at which he is required to appear and one day’s attendance.

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

§ 1084. If the witness demands the fees to which he is entitled at the time of service and they are not at that time paid or tendered he shall not be required to attend as directed in the subpoena.

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

§ 1085. All fees and mileage to which any witness is entitled under the provisions of this chapter may be collected by action therefor instituted by the person to whom they are payable.

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

§ 1086. No witness shall be compelled to attend as a witness before the board under this division out of the county in which he resides, unless the distance is less than 150 miles from his place of residence to the place of hearing, except that the board, upon affidavit of any party showing that the testimony of such witness is material and necessary, may indorse on the subpoena an order requiring the attendance of such witness.

(Amended by Stats. 1959, Ch. 667.)

Article 3. Compelling Attendance [1090. - 1097.]

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

§ 1090. The superior court of the county in which any proceeding is held by the board may compel the attendance and giving of testimony by witnesses and the production of evidence as required by any subpoena issued by the board.

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

§ 1091. In case of the refusal of any witness to attend or testify or produce any evidence required by a subpoena issued by it, the board may report by petition to the superior court in and for the county in which the proceeding is pending.

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

§ 1092. The petition shall set forth the following:

(a) That due notice has been given of the time and place of attendance of the witness or for the production of evidence and that the witness has been summoned in the manner prescribed in this chapter.

(b) That the witness has failed and refused to attend or produce the evidence required by the subpoena before the board in the proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of the proceeding.

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

§ 1093. The petition shall ask an order of court compelling the witness to attend, testify, and produce the evidence before the board.

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

§ 1094. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place fixed by the court in the order and not more than 10 days from the date of the order, and then and there show cause, if any he have, why he refused to obey the subpoena, or refused to answer questions propounded to him by the board, or neglected, failed, or refused to produce before the board the evidence called for in the subpoena.

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

§ 1095. A copy of the order and of the petition shall be served upon the witness.

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

§ 1096. If it appears to the court that the subpoena was regularly issued, the court shall thereupon enter an order that the witness appear before the board at the time and place fixed in the order and testify or produce the required evidence or both testify and produce.

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

§ 1097. Upon failure to obey the order the witness shall be dealt with as for contempt of court.

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

Article 4. Depositions [1100. - 1100.]

(Article 4 enacted by Stats. 1943, Ch. 368.)

§ 1100. The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(Amended by Stats. 2004, Ch. 182, Sec. 60. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)

Article 5. Immunity [1105. - 1106.]

(Article 5 enacted by Stats. 1943, Ch. 368.)

§ 1105. (a) Except as provided in subdivision (c), no person shall be excused from testifying or from producing any evidence in any investigation or inquiry by or hearing before the board upon the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to any penalty.

(b) The board may grant immunity to any person who is compelled to testify or to produce documentary evidence before the board and who invokes the privilege against self-incrimination.

(c) If the board does not grant immunity after a person invokes the privilege against self-incrimination, the board shall excuse the person from giving any testimony or producing any evidence to which the privilege against self-incrimination applies, and the board shall dismiss, continue, or limit the scope of the proceedings as necessary to ensure that the unavailability of the testimony or evidence does not deny due process of law to any party.

(Amended by Stats. 1994, Ch. 45, Sec. 1. Effective January 1, 1995.)

§ 1106. No person who is granted immunity under subdivision (b) of Section 1105 shall be criminally prosecuted or be subjected to any criminal penalty for or on account of any act, transaction, matter, or thing material to the matter under investigation by the board concerning which he or she has been

compelled as a witness to testify or to produce documentary evidence pursuant to the granting of immunity; but no person so testifying or producing shall be exempt from prosecution and punishment for any perjury committed by him or her in that testimony.

(Amended by Stats. 1994, Ch. 45, Sec. 2. Effective January 1, 1995.)

CHAPTER 4. RECONSIDERATION, AMENDMENT, AND JUDICIAL REVIEW OF WATER RIGHT DECISIONS AND ORDERS [1120. - 1126.2.]

(Chapter 4 added by Stats. 1996, Ch. 659, Sec. 2.)

Article 1. General Provisions [1120. - 1121.]

(Article 1 added by Stats. 1996, Ch. 659, Sec. 2.)

§ 1120. This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, or the public trust doctrine.

(Amended by Stats. 2014, Ch. 347, Sec. 6. Effective January 1, 2015.)

§ 1121. The board shall serve a copy of a decision or order on the parties by personal delivery or registered mail.

(Added by Stats. 1996, Ch. 659, Sec. 2. Effective January 1, 1997.)

Article 2. Reconsideration and Amendment of Decisions and Orders [1122. - 1124.]

(Article 2 added by Stats. 1996, Ch. 659, Sec. 2.)

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

(Amended by Stats. 2001, Ch. 315, Sec. 3. Effective January 1, 2002.)

§ 1123. The decision or order may be reconsidered by the board on all the pertinent parts of the record and such argument as may be permitted, or a further hearing may be held, upon notice to all interested persons, for the purpose of receiving such additional evidence as the board may, for cause, allow. The decision or order on reconsideration shall have the same force and effect as an original order or decision.

(Added by Stats. 1996, Ch. 659, Sec. 2. Effective January 1, 1997.)

§ 1124. The board at any time may amend or modify a decision or order to correct any obvious typographical or clerical error or oversight without the necessity of notice and a hearing thereon.

(Added by Stats. 1996, Ch. 659, Sec. 2. Effective January 1, 1997.)

Article 3. Review by Court of Decisions and Orders [1126. - 1126.]

(Article 3 added by Stats. 1996, Ch. 659, Sec. 2.)

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

(b) Any party aggrieved by any decision or order may, not later than 30 days from the date of final action by the board, file a petition for a writ of mandate for review of the decision or order. Except in cases where the decision or order is issued under authority delegated to an officer or employee of the board, reconsideration before the board is not an administrative remedy that is required to be exhausted before filing a petition for writ of mandate. The time for filing the petition for writ of mandate and the time for filing an action or proceeding in which the board is a respondent under Section 21167 of the Public Resources Code shall be extended for any person who seeks reconsideration by the board pursuant to this article. The amendment of this subdivision made during the 2001 portion of the 2001–02 Regular Session does not constitute a change in, but is declaratory of, existing law.

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

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

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