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AMENDED IN ASSEMBLY JUNE 26, 2017
AMENDED IN SENATE APRIL 26, 2017
AMENDED IN SENATE MARCH 30, 2017

SENATE BILL

No. 623

Introduced by Senator Monning
(Principal coauthors: Senators De León and Hertzberg)
(~~Coauthor: Senator Stone~~)
(Coauthors: Senators Stone and Hernandez)

February 17, 2017

An act to amend Section 116395 of, and to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104 of, the Health and Safety Code, and to amend Section 13050 of, and to add ~~and repeal~~ Article 4.5 (commencing with Section 13278) of Chapter 4 of Division 7 of, the Water Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Monning. Water quality: Safe and Affordable Drinking Water Fund.

(1) Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law establishes the Office of Sustainable Water Solutions within the State Water Resources Control Board with the purpose of promoting 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.

This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the office. The bill would require the board to administer the fund to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards, as specified. The bill would authorize the board to provide for the deposit of federal contributions and voluntary contributions, gifts, grants, or bequests. The bill would require the board to expend moneys in the fund for grants, loans, contracts, or services to assist those communities and individual domestic well owners that rely on contaminated drinking water to have access to safe and affordable drinking water consistent with a fund implementation plan adopted annually by the board, as prescribed. The bill would require the board annually to prepare and make available a report of expenditures of the fund and to adopt annually, after a public hearing, an assessment of funding needed to ensure all Californians have access to safe drinking water. By creating a new continuously appropriated fund, this bill would make an appropriation.

The bill would state the intent of the Legislature to subsequently amend the bill to seek specific funding from agricultural operations to assist in providing emergency, interim, and long-term assistance to community water systems and individual domestic well users whose wells are located in agricultural areas.

(2) The act provides for the operation of public water systems and imposes on the state board various duties and responsibilities for the regulation and control of drinking water in the state. The act generally does not apply to state small water systems, except that the act requires the board to adopt regulations specifying minimum requirements for operation of a state small water system, which are authorized to be less stringent than the requirements for public water systems, requires the enforcement of these requirements, and authorizes the reasonable costs of the local health officer to be recovered. The act, within 3 years after September 19, 1985, required the State Department of Public Health to, among other things, conduct training workshops to assist health officers in evaluation of small public water systems, as defined, for organic chemical contamination, and in sampling and testing procedures and required the local health officer, in consultation with the department, to conduct an evaluation of all small public water systems under their

jurisdictions to determine the potential for contamination of groundwater sources by organic chemicals and to develop a sampling plan for each system within their jurisdiction. The act provided that these provisions were operative during any fiscal year only if the Legislature appropriated sufficient funds to pay for all state-mandated costs to be incurred by local agencies during that year due to these provisions.

This bill would require the state board, by January 1, 2019, to promulgate regulations to require state small water systems and individual domestic wells to test their water supply wells for contamination. The bill would require testing to be prioritized based on local water quality conditions and would require the state board to review these regulations at least every 5 years. The bill would exempt these provisions from the above-described inoperative provision.

(3) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with authority over matters relating to water quality. The act requires the state board to formulate and adopt state policies for water quality control and requires the regional boards to adopt regional water quality control plans in compliance with the state policies. Under the act, the state board and the regional boards prescribe waste discharge requirements for the discharge of waste that could affect the quality of the waters of the state. The act requires, upon the order of a regional board, a person who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, to clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, to take other remedial action.

This bill would prohibit the state board or a regional ~~board~~ board, *until January 1, 2028*, from subjecting an agricultural operation, as defined, to specified enforcement for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance *for nitrates in groundwater* if that agricultural operation demonstrates that it has satisfied certain mitigation requirements, including, among other requirements, the timely payment of any applicable fee, assessment, or charge into the fund. *The bill would prohibit the state board or a regional board, beginning January 1, 2028, until January 1, 2033, from subjecting an agricultural operation to specified enforcement for*

creating or threatening to create a condition of pollution or nuisance for nitrate in groundwater if that agricultural operation demonstrates that it has satisfied the prescribed mitigation requirements. The bill would require the state board, by January 1, 2027, to conduct a public review of regulatory and basin plan amendment implementation programs to evaluate progress toward achieving water quality objectives with respect to nitrates in groundwater and assess compliance with adopted timelines, monitoring requirements, and implementation of best practicable treatment or control. ~~The bill would repeal these provisions on January 1, 2028.~~

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

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

1 SECTION 1. Section 116395 of the Health and Safety Code
2 is amended to read:
3 116395. (a) The Legislature finds and declares all of the
4 following:
5 (1) The large water system testing program has discovered
6 chemical contamination of the state's drinking water with
7 increasing frequency.
8 (2) A significant number of California residents rely on the
9 state's small water systems and individual domestic wells to
10 provide their water.
11 (3) The small systems and individual domestic wells, because
12 they tend to be located in outlying rural areas where pesticide use
13 is prevalent, and because they draw their water from shallow
14 aquifers, face a serious threat of contamination.
15 (4) Unchecked water sources that may be contaminated pose a
16 potentially serious threat to the health of the citizens of California,
17 particularly those living in outlying rural areas.
18 (5) It is in the interest of all Californians that a testing program
19 for small public water systems and individual domestic wells be
20 implemented and carried out as expeditiously as possible.
21 (6) Section 106.3 of the Water Code declares that every
22 Californian has the right to sufficient clean, safe, affordable, and
23 accessible water adequate for human consumption, cooking, and
24 sanitary purposes.

1 (7) To ensure that the right of every Californian to sufficient
2 clean, safe, affordable, and accessible water adequate for human
3 consumption, cooking, and sanitary purposes is met, it is in the
4 interest of the State of California to identify water quality threats
5 in the state’s drinking water supply, to the extent feasible, whether
6 those supplies serve a public water system, state small water
7 system, or an individual domestic well.

8 (b) (1) For purposes of this section, “small public water system”
9 means a system with 200 connections or less, and is one of the
10 following:

11 (A) A community water system that serves at least 15 service
12 connections used by yearlong residents or regularly serves at least
13 25 yearlong residents.

14 (B) A state small water system.

15 (C) A noncommunity water system such as a school, labor camp,
16 institution, or place of employment, as designated by the state
17 board.

18 (2) For the purposes of this section, “individual domestic well”
19 means a groundwater well used to supply water for the domestic
20 needs of an individual residence or systems of four or less service
21 connections.

22 (c) The state board shall conduct training workshops to assist
23 health officers in evaluation of small public water systems for
24 organic chemical contamination, and in sampling and testing
25 procedures. The state board shall, at a minimum, provide health
26 officers with guidelines for evaluating systems and instructions
27 for sampling.

28 (d) The state board shall develop a schedule for conduct of the
29 programs by the local health officers. The schedule shall establish
30 a program to address first those systems with the most serious
31 potential for contamination. The state board shall enter into
32 agreements with the local health agencies to conduct the necessary
33 work to be performed pursuant to the schedule. The department
34 shall begin the program no later than three months after September
35 19, 1985. All local health officers shall complete the evaluation,
36 sampling, testing, review of sampling results, and notification to
37 the public water systems within their jurisdiction in accordance
38 with the agreements entered into with the state board and within
39 the schedule established by the state board. All work required by

1 this subdivision shall be completed within three years after
2 September 19, 1985.

3 (e) By January 1, 2019, the state board shall promulgate
4 regulations to require state small water systems and individual
5 domestic wells to test their water supply wells for contamination.
6 The state board shall prioritize testing based on local water quality
7 conditions. The state board shall review these regulations at least
8 every five years.

9 (f) (1) Except as provided in paragraph (2), this section shall
10 be operative during any fiscal year only if the Legislature
11 appropriates sufficient funds to pay for all state-mandated costs
12 to be incurred by local agencies pursuant to this section during
13 that year.

14 (2) Subdivisions (a), (b), (e), and (f) shall not become
15 inoperative.

16 SEC. 2. Chapter 4.6 (commencing with Section 116765) is
17 added to Part 12 of Division 104 of the Health and Safety Code,
18 to read:

19
20 CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER
21

22 116765. For the purposes of this chapter:

23 (a) "Agricultural operations" has the same meaning as defined
24 in Section 13050 of the Water Code.

25 (b) "Board" means the State Water Resources Control Board.

26 (c) "Community water system" has the same meaning as defined
27 in Section 116275.

28 (d) "Disadvantaged community" has the same meaning as
29 defined in Section 116275.

30 (e) "Fund" means the Safe and Affordable Drinking Water Fund
31 established pursuant to Section 116766.

32 (f) "Nontransient noncommunity water system" has the same
33 meaning as defined in Section 116275.

34 (g) "Public water system" has the same meaning as defined in
35 Section 116275.

36 (h) "Replacement water" includes, but is not limited to, bottled
37 water, point-of-use, or point-of-entry treatment units.

38 (i) "Safe Drinking Water Plan" means the plan prepared pursuant
39 to Section 116355.

1 116766. The Safe and Affordable Drinking Water Fund is
2 hereby established in the State Treasury. Notwithstanding Section
3 13340 of the Government Code, all moneys in the fund are
4 continuously appropriated to the Office of Sustainable Water
5 Solutions within the board without regard to fiscal years, in
6 accordance with this chapter. Moneys in the fund at the close of
7 the fiscal year shall remain in the fund and shall not revert to the
8 General Fund.

9 116767. (a) The board shall administer the fund for the
10 purposes of this chapter to provide a stable source of funding to
11 assist communities and individual domestic well users to address
12 contaminants in drinking water that exceed safe drinking water
13 standards, the treatment of which would otherwise make the cost
14 of water service unaffordable. The board shall prioritize the use
15 of this funding to assist low-income communities and low-income
16 individual domestic well users. In addition, the board shall
17 prioritize the use of this funding for costs other than those related
18 to capital construction costs. An expenditure from the fund shall
19 be consistent with the annual fund implementation plan developed
20 pursuant to Section 116769. On and after January 1, 2020, the total
21 unencumbered amount in the fund shall not exceed the board's
22 total estimated need for moneys in the fund over a two-year period.

23 (b) In accordance with subdivision (a), the board shall expend
24 moneys in the fund for grants, loans, contracts, or services to assist
25 those communities and individual domestic well owners that rely
26 on contaminated drinking water to have access to safe and
27 affordable drinking water with any of the following:

28 (1) The provision of replacement water, as needed, to ensure
29 immediate protection of health and safety as a short-term solution.

30 (2) The development, implementation, and sustainability of
31 long-term solutions, including, but not limited to, planning,
32 construction, and operation and maintenance costs associated with
33 replacing, blending, or treating contaminated wells and
34 consolidating water systems.

35 (3) Identifying Californians without access to safe drinking
36 water who are eligible to receive assistance from the fund and
37 providing outreach to them.

38 (4) Testing the drinking water quality of individual domestic
39 wells serving low-income households.

1 (c) Eligible applicants for funding include public agencies,
2 nonprofit organizations, public utilities, federally recognized Indian
3 tribes, state Indian tribes listed on the Native American Heritage
4 Commission's California tribal consultation list, groundwater
5 sustainability agencies, and mutual water companies.

6 (d) The board may expend up to 5 percent of the annual
7 expenditures from the fund for reasonable costs associated with
8 administration of the fund.

9 (e) The board may undertake any of the following actions to
10 implement the fund:

11 (1) Provide for the deposit of any of the following available and
12 necessary moneys into the fund:

13 (A) Federal contributions.

14 (B) Voluntary contributions, gifts, grants, or bequests.

15 (2) Enter into agreements for contributions to the fund from the
16 federal government, local or state agencies, and private
17 corporations or nonprofit organizations.

18 (3) Provide for appropriate audit, accounting, and fiscal
19 management services, plans, and reports relative to the fund.

20 (4) Take additional incidental action as may be appropriate for
21 adequate administration and operation of the fund.

22 116768. It is the intent of the Legislature to subsequently amend
23 this section to seek specific funding from agricultural operations
24 to assist in providing emergency, interim, and long-term assistance
25 to community water systems and individual domestic well users
26 whose wells have been impacted by nitrate contamination and
27 whose wells are located in agricultural areas.

28 116769. Annually, the board shall do all of the following:

29 (a) Prepare and make available a report of expenditures from
30 the fund.

31 (b) Adopt, after a public hearing, an assessment of funding
32 needed to ensure all Californians have access to safe drinking
33 water. This annual assessment shall incorporate information
34 contained in the Safe Drinking Water Plan and include a list of
35 community water systems and nontransient noncommunity water
36 systems without access to safe drinking water, as well as
37 identification of small communities and rural populations not
38 served by public water systems that do not have access to safe
39 drinking water.

1 (c) (1) Adopt, after a public hearing, a fund implementation
2 plan with priorities and guidelines for expenditures of the fund.
3 The board shall work with a multistakeholder advisory group that
4 shall be open to participation by representatives of entities paying
5 into the fund, public water systems, technical assistance providers,
6 local agencies, affected persons, nongovernmental organizations,
7 and the public, to establish priorities for the plan.

8 (2) The fund implementation plan shall prioritize eligibility for
9 expenditures of the fund based on the following:

10 (A) A water system’s current or projected water rates needed
11 to ensure safe drinking water exceed or will exceed 1.5 percent of
12 the median household income for that water system and the water
13 system qualifies as a disadvantaged community.

14 (B) The costs for providing potable water for an individual
15 domestic well exceed or will exceed 1.5 percent of the household’s
16 income and the household’s income is less than 80 percent of the
17 statewide household median income.

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

19 13050. As used in this division:

20 (a) “State board” means the State Water Resources Control
21 Board.

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

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

26 (d) “Waste” includes sewage and any and all other waste
27 substances, liquid, solid, gaseous, or radioactive, associated with
28 human habitation, or of human or animal origin, or from any
29 producing, manufacturing, or processing operation, including waste
30 placed within containers of whatever nature prior to, and for
31 purposes of, disposal.

32 (e) “Waters of the state” means any surface water or
33 groundwater, including saline waters, within the boundaries of the
34 state.

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

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

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

8 (i) “Water quality control” means the regulation of any activity
9 or factor which may affect the quality of the waters of the state
10 and includes the prevention and correction of water pollution and
11 nuisance.

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

15 (1) Beneficial uses to be protected.

16 (2) Water quality objectives.

17 (3) A program of implementation needed for achieving water
18 quality objectives.

19 (k) “Contamination” means an impairment of the quality of the
20 waters of the state by waste to a degree which creates a hazard to
21 the public health through poisoning or through the spread of
22 disease. “Contamination” includes any equivalent effect resulting
23 from the disposal of waste, whether or not waters of the state are
24 affected.

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

28 (A) The waters for beneficial uses.

29 (B) Facilities which serve these beneficial uses.

30 (2) “Pollution” may include “contamination.”

31 (m) “Nuisance” means anything which meets all of the following
32 requirements:

33 (1) Is injurious to health, or is indecent or offensive to the senses,
34 or an obstruction to the free use of property, so as to interfere with
35 the comfortable enjoyment of life or property.

36 (2) Affects at the same time an entire community or
37 neighborhood, or any considerable number of persons, although
38 the extent of the annoyance or damage inflicted upon individuals
39 may be unequal.

1 (3) Occurs during, or as a result of, the treatment or disposal of
2 wastes.

3 (n) “Recycled water” means water which, as a result of treatment
4 of waste, is suitable for a direct beneficial use or a controlled use
5 that would not otherwise occur and is therefor considered a
6 valuable resource.

7 (o) “Citizen or domiciliary” of the state includes a foreign
8 corporation having substantial business contacts in the state or
9 which is subject to service of process in this state.

10 (p) (1) “Hazardous substance” means either of the following:

11 (A) For discharge to surface waters, any substance determined
12 to be a hazardous substance pursuant to Section 311(b)(2) of the
13 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

14 (B) For discharge to groundwater, any substance listed as a
15 hazardous waste or hazardous material pursuant to Section 25140
16 of the Health and Safety Code, without regard to whether the
17 substance is intended to be used, reused, or discarded, except that
18 “hazardous substance” does not include any substance excluded
19 from Section 311(b)(2) of the Federal Water Pollution Control Act
20 because it is within the scope of Section 311(a)(1) of that act.

21 (2) “Hazardous substance” does not include any of the
22 following:

23 (A) Nontoxic, nonflammable, and noncorrosive stormwater
24 runoff drained from underground vaults, chambers, or manholes
25 into gutters or storm sewers.

26 (B) Any pesticide which is applied for agricultural purposes or
27 is applied in accordance with a cooperative agreement authorized
28 by Section 116180 of the Health and Safety Code, and is not
29 discharged accidentally or for purposes of disposal, the application
30 of which is in compliance with all applicable state and federal laws
31 and regulations.

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

35 (D) Any discharge to land which results, or probably will result,
36 in a discharge to groundwater if the amount of the discharge to
37 land is less than a reportable quantity, as determined by regulations
38 adopted pursuant to Section 13271, for substances listed as
39 hazardous pursuant to Section 25140 of the Health and Safety
40 Code. No discharge shall be deemed a discharge of a reportable

1 quantity until regulations set a reportable quantity for the substance
2 discharged.

3 (q) (1) “Mining waste” means all solid, semisolid, and liquid
4 waste materials from the extraction, beneficiation, and processing
5 of ores and minerals. Mining waste includes, but is not limited to,
6 soil, waste rock, and overburden, as defined in Section 2732 of
7 the Public Resources Code, and tailings, slag, and other processed
8 waste materials, including cementitious materials that are managed
9 at the cement manufacturing facility where the materials were
10 generated.

11 (2) For the purposes of this subdivision, “cementitious material”
12 means cement, cement kiln dust, clinker, and clinker dust.

13 (r) “Master recycling permit” means a permit issued to a supplier
14 or a distributor, or both, of recycled water, that includes waste
15 discharge requirements prescribed pursuant to Section 13263 and
16 water recycling requirements prescribed pursuant to Section
17 13523.1.

18 (s) (1) “Agricultural operation” means either of the following:

19 (A) A discharger that satisfies both of the following conditions:

20 (i) The discharger is an owner, operator, or both, of land that is
21 irrigated to produce crops or pasture for commercial purposes or
22 a nursery.

23 (ii) The discharger is enrolled or named in an irrigated lands
24 regulatory program order adopted by the state board or a regional
25 board pursuant to Section 13263 or 13269.

26 (B) A discharger that satisfies both of the following conditions:

27 (i) The discharger is an owner, operator, or both of a facility
28 that is used for the raising or harvesting of livestock.

29 (ii) The discharger is enrolled or named in an order adopted by
30 the state board or a regional board pursuant to Section 13263 or
31 13269 that regulates the discharges of waste from a facility
32 identified in clause (i) to protect ground and surface water.

33 (2) “Agricultural operation” does not include any of the
34 following:

35 (A) ~~An off-farm~~ facility that processes crops or livestock.

36 (B) ~~An off-farm~~ facility that manufactures, synthesizes,
37 stores, or processes fertilizer.

38 (C) Any portions of land or activities occurring on those portions
39 of land that are not covered by an order adopted by the state board
40 or a regional board pursuant to Section 13263 or 13269: *identified*

1 *in clause (ii) of subparagraph (A) or clause (ii) of subparagraph*
2 *(B) of paragraph (1).*

3 SEC. 4. Article 4.5 (commencing with Section 13278) is added
4 to Chapter 4 of Division 7 of the Water Code, to read:

5

6 Article 4.5. Discharges of Nitrate to Groundwater from
7 Agricultural Operations

8

9 13278. (a) For the purposes of this article, the Legislature finds
10 and declares all of the following:

11 (1) Implementation of currently known best management
12 practices for some crops can reduce but not always completely
13 prevent nitrogen in organic and synthetic fertilizers that transform
14 to nitrates from reaching groundwater at concentrations above the
15 water quality objectives established pursuant to this division.

16 (2) It is acknowledged that discharges of nitrate from agricultural
17 operations could reach groundwater and could cause or contribute
18 to exceedances of drinking water standards for nitrate, *and could*
19 cause conditions of pollution of or nuisance in those waters as
20 defined and applied pursuant to *in accordance with* this division,
21 or both.

22 (3) *Nitrate contamination of groundwater impacts drinking*
23 *water sources for hundreds of thousands of Californians and it is*
24 *necessary to protect current and future drinking water users from*
25 *the impacts of nitrate contamination.*

26 ~~(3)~~

27 (4) Despite ~~substantial~~ progress in controlling discharges of
28 nitrogen that lead to nitrate formation, some groundwater sources
29 of drinking water will continue to be adversely impacted by nitrates
30 and it is important to have in place a program for mitigating these
31 impacts.

32 ~~(4) The Safe and Affordable Drinking Water Fund is established~~
33 ~~pursuant to Section 116766 of the Health and Safety Code in~~
34 ~~consideration of and in furtherance of the human right to water~~
35 ~~that has previously been codified as an established policy of the~~
36 ~~state.~~

37 (5) The regional boards will continue to regulate discharges to
38 reduce nitrogen loading and protect beneficial uses of water and
39 groundwater basins; the state board, regional boards, and courts
40 will ensure compliance with those orders; and dischargers will pay

1 for mitigation of ~~past and ongoing~~ pollution by funding
2 replacement water for affected communities.

3 (b) ~~It is the intent of the~~ *The Legislature declares its intent* in
4 establishing this article to do both of the following:

5 (1) To subsequently amend this article to establish an
6 agricultural assessment to be paid by agricultural operations for a
7 period of ~~10~~ 15 years to provide funding, as a portion of the Safe
8 and Affordable Drinking Water Fund, to make available alternative
9 supplies of safe drinking water to persons affected by discharges
10 of nitrogen from agricultural operations that may occur in amounts
11 that may cause or contribute to an exceedance of a water quality
12 objective or cause conditions of pollution or nuisance.

13 (2) To limit ~~certain administrative~~ enforcement actions that a
14 regional board or the state board could otherwise initiate during
15 that ~~10-year~~ 15-year period against an agricultural operation paying
16 the ~~nitrate mitigation~~ *agricultural* assessment, while maintaining
17 the overall framework of this division to protect beneficial uses,
18 implement water quality objectives in waters of the state, and
19 regulate activities and factors that affect water quality to attain the
20 highest water quality that is reasonable.

21 13278.1. (a) An agricultural operation shall not be subject to
22 enforcement *undertaken or initiated* by the state board or a regional
23 board under Chapter 5 (commencing with Section 13330) for
24 causing or contributing to an exceedance of a water quality
25 objective for nitrate in groundwater or for causing or contributing
26 to a condition of pollution or nuisance *for nitrates in groundwater*
27 if an agricultural operation that discharges or threatens to discharge,
28 or has discharged or previously threatened to discharge, nitrate to
29 groundwater demonstrates that it has satisfied all of the following
30 mitigation requirements:

31 (1) The agricultural operation has timely paid any applicable
32 fee, assessment, or charge into the Safe and Affordable Drinking
33 Water Fund or an applicable agricultural assessment is providing
34 funding into the Safe and Affordable Drinking Water Fund. For
35 the purposes of this paragraph, “timely paid” means that an
36 agricultural operation has paid all applicable fees, assessments, or
37 charges, no later than 90 days after their respective due dates, since
38 the application of the fee, assessment, or charge to the agricultural
39 operation.

1 (2) Except as provided in subdivision (b), the agricultural
2 operation is in compliance with all applicable provisions prescribed
3 by a regional board or the state board in an order adopted pursuant
4 to Section 13263 or 13269, including, but not limited to, the
5 following:

6 (A) Requirements to implement best practicable treatment or
7 control.

8 (B) Best efforts, monitoring, and reporting requirements.

9 (C) Timelines.

10 (3) The agricultural operation is in compliance with an
11 applicable program of implementation for achieving groundwater
12 quality objectives for nitrate that is part of an applicable water
13 quality control plan adopted by the state board or a regional board
14 pursuant to Article 3 (commencing with Section 13240).

15 (b) (1) The mitigation requirement contained in paragraph (2)
16 of subdivision (a) does not include any generalized prohibition
17 *contained in an order adopted under Section 13263 or 13269* on
18 causing or contributing, or threatening to cause or contribute, to
19 an exceedance of a water quality objective for nitrate in
20 groundwater or a condition of pollution or nuisance for nitrate in
21 groundwater.

22 (2) (A) An agricultural operation ~~shall not be~~ *is not* in
23 compliance with the mitigation requirement in paragraph (2) of
24 subdivision (a) if the agricultural operation has been subject to an
25 enforcement action under Chapter 5 (commencing with Section
26 13330) within the preceding 12 months for any violation of an
27 order adopted under Section 13263 or 13269 authorizing discharges
28 from agricultural operations.

29 (B) Subparagraph (A) does not apply to an enforcement action
30 commenced after January 1, 2016, and before January 1, 2018,
31 inclusive, alleging that ~~discharges a discharge~~ from an agricultural
32 operation caused or contributed, or threatened to cause or
33 contribute, to an exceedance of a water quality objective for nitrate
34 in groundwater, conditions of pollution or nuisance for nitrate in
35 groundwater, or both.

36 (3) An agricultural operation does not qualify for the
37 enforcement exemption set forth in this subdivision if the operation
38 fails to continue to make applicable payments into the Safe and
39 Affordable Drinking Water Fund to the extent that the agricultural
40 operation maintains a continuance of farming operation.

1 (c) Both of the following apply to a discharge of nitrogen by an
2 agricultural operation that occurs when the discharger is in full
3 compliance with the mitigation requirements:

4 (1) The discharge of nitrogen shall not be admissible in a future
5 enforcement action against the agricultural operation by the state
6 board or a regional board pursuant to Chapter 5 (commencing with
7 Section 13300) to support a claim that the agricultural operation
8 is causing or contributing, or threatening to cause or contribute,
9 to an exceedance of a water quality objective for nitrate in
10 groundwater or a condition of pollution or nuisance for nitrate in
11 groundwater.

12 (2) The discharge of nitrogen shall not be considered by the
13 state board or a regional board to apportion responsibility and shall
14 not be used by any person to diminish responsibility in any
15 enforcement action initiated pursuant to Chapter 5 (commencing
16 with Section 13300) with respect to discharges of nitrogen,
17 regardless of source, that did not occur in compliance with the
18 mitigation requirements.

19 (d) Nothing in this section alters the state board's or a regional
20 board's authority to require or conduct investigations, to require
21 reports on or to establish other requirements for best practicable
22 treatment or control, or to require monitoring and reporting
23 requirements to protect water quality.

24 (e) This section shall not be deemed to change or alter a water
25 quality objective that is part of a water quality control plan adopted
26 by the state board or a regional board pursuant to Article 3
27 (commencing with Section 13240).

28 (f) *This section shall remain in effect only until January 1, 2028,*
29 *and as of that date is repealed.*

30 *13278.2. (a) An agricultural operation shall not be subject to*
31 *enforcement undertaken or initiated by the state board or a*
32 *regional board under Section 13304 for creating or threatening*
33 *to create a condition of pollution or nuisance for nitrates in*
34 *groundwater if an agricultural operation that discharges or*
35 *threatens to discharge, or has discharged or previously threatened*
36 *to discharge, nitrate to groundwater demonstrates that it has*
37 *satisfied all of the following mitigation requirements:*

38 *(1) The agricultural operation has timely paid any applicable*
39 *fee, assessment, or charge into the Safe and Affordable Drinking*
40 *Water Fund or an applicable agricultural assessment is providing*

1 *funding into the Safe and Affordable Drinking Water Fund. For*
2 *the purposes of this paragraph, “timely paid” means that an*
3 *agricultural operation has paid all applicable fees, assessments,*
4 *or charges, no later than 90 days after their respective due dates,*
5 *since the application of the fee, assessment, or charge to the*
6 *agricultural operation.*

7 (2) *Except as provided in subdivision (b), the agricultural*
8 *operation is in compliance with all applicable provisions*
9 *prescribed by a regional board or the state board in an order*
10 *adopted pursuant to Section 13263 or 13269, including, but not*
11 *limited to, the following:*

12 (A) *Requirements to implement best practicable treatment or*
13 *control.*

14 (B) *Best efforts, monitoring, and reporting requirements.*

15 (C) *Timelines.*

16 (3) *The agricultural operation is in compliance with an*
17 *applicable program of implementation for achieving groundwater*
18 *quality objectives for nitrate that is part of an applicable water*
19 *quality control plan adopted by the state board or a regional board*
20 *pursuant to Article 3 (commencing with Section 13240).*

21 (b) (1) *The mitigation requirement contained in paragraph (2)*
22 *of subdivision (a) does not include any generalized prohibition*
23 *contained in an order adopted under Section 13263 or 13269 on*
24 *causing or contributing, or threatening to cause or contribute, to*
25 *an exceedance of a water quality objective for nitrate in*
26 *groundwater or a condition of pollution or nuisance for nitrate in*
27 *groundwater.*

28 (2) *An agricultural operation is not in compliance with the*
29 *mitigation requirement in paragraph (2) of subdivision (a) if the*
30 *agricultural operation has been subject to an enforcement action*
31 *under Chapter 5 (commencing with Section 13330) within the*
32 *preceding 12 months for any violation of an order adopted under*
33 *Section 13263 or 13269 authorizing discharges from agricultural*
34 *operations.*

35 (3) *An agricultural operation does not qualify for the*
36 *enforcement exemption set forth in this subdivision if the operation*
37 *fails to continue to make applicable payments into the Safe and*
38 *Affordable Drinking Water Fund to the extent that the agricultural*
39 *operation maintains a continuance of farming operation.*

1 (c) Both of the following apply to a discharge of nitrogen by an
2 agricultural operation that occurs when the discharger is in full
3 compliance with the mitigation requirements:

4 (1) The discharge shall not be admissible in a future enforcement
5 action against the agricultural operation by the state board or a
6 regional board pursuant to Chapter 5 (commencing with Section
7 13300) to support a claim that the agricultural operation is causing
8 or contributing, or threatening to cause or contribute, to an
9 exceedance of a water quality objective for nitrate in groundwater
10 or a condition of pollution or nuisance for nitrate in groundwater.

11 (2) The discharge shall not be considered by the state board or
12 a regional board to apportion responsibility and shall not be used
13 by any person to diminish responsibility in any enforcement action
14 initiated pursuant to Chapter 5 (commencing with Section 13300)
15 with respect to discharges of nitrogen, regardless of source, that
16 did not occur in compliance with the mitigation requirements.

17 (d) Nothing in this section alters the state board’s or a regional
18 board’s authority to require or conduct investigations, to require
19 reports on or to establish other requirements for best practicable
20 treatment or control, or to require monitoring and reporting
21 requirements to protect water quality.

22 (e) This section shall not be deemed to change or alter a water
23 quality objective that is part of a water quality control plan adopted
24 by the state board or a regional board pursuant to Article 3
25 (commencing with Section 13240).

26 (f) (1) This section shall become operative on January 1, 2028.

27 (2) This section shall remain in effect only until January 1, 2033,
28 and as of that date is repealed, unless a later enacted statute that
29 is enacted before January 1, 2033, deletes or extends that date.

30 ~~13278.2.~~

31 13278.3. By January 1, 2027, the state board shall conduct a
32 public review of regulatory and basin plan amendment
33 implementation programs to evaluate progress toward achieving
34 water quality objectives with respect to nitrates in groundwater
35 and assess compliance with adopted timelines, monitoring
36 requirements, and implementation of best practicable treatment or
37 control.

1 ~~13278.3.~~

2 *13278.4.* Nothing in this article limits the liability of a
3 discharger under any other law, including, but not limited to, Part
4 3 (commencing with Section 3479) of Division 4 of the Civil Code.

5 ~~13278.4. This article shall remain in effect only until January~~
6 ~~1, 2028, and as of that date is repealed, unless a later enacted statute~~
7 ~~that is enacted before January 1, 2028, deletes or extends that date.~~

8

9

10 REVISIONS: _____

11 Heading—Line 3.

12 _____