



**BOARD OF DIRECTORS  
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA**

**Legislative/Human Resources Committee**

**Tuesday, June 13, 2023**

**10:15 a.m.**

**Boardroom, 2<sup>nd</sup> Floor**

**375 11<sup>th</sup> Street**

**Oakland, CA 94607**

**\*\*\* Please see appendix for public participation instructions\*\*\***

*Committee Members: Directors Lesa R. McIntosh {Chair}, John A. Coleman, and William B. Patterson*

**ROLL CALL:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification or referring a matter to staff when responding to items that are not listed on the agenda.

**DETERMINATION AND DISCUSSION:**

1. Legislative Update.

(Viatella)

- Receive Legislative Report No. 05-23 and consider positions on the following bills: AB 388 (Connolly) Wildfire and Forest Resilience Action Plan: Implementation Strategies: Roadmap; AB 460 (Bauer-Kahan) State Water Resources Control Board: Water Rights and Usage: Interim Relief: Procedures; AB 754 (Papan) Water Management Planning: Water Shortages; AB 755 (Papan) Water: Public Entity: Cost-Of-Service Analysis; AB 1337 (Wicks) State Water Resources Control Board: Water Diversion Curtailment; H.R. 2964 (McClain) Wastewater Infrastructure Pollution Prevention and Environmental Safety Act; and S. 1350 (Merkley) Wastewater Infrastructure Pollution Prevention and Environmental Safety Act
- Update on Legislative Issues of Interest to EBMUD

**ADJOURNMENT:**

***Disability Notice***

*If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.*

***Document Availability***

*Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11<sup>th</sup> Street, Oakland, California, during normal business hours, and can be viewed on our website at [www.ebmud.com](http://www.ebmud.com).*



## APPENDIX

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### Legislative/Human Resource Committee Meeting Tuesday, June 13, 2023 – 10:15 a.m.

*EBMUD Board committee meetings will be conducted in person and via Zoom.  
These meetings are recorded and live-streamed.*

#### Online\* Online

<https://ebmud.zoom.us/j/98022213415?pwd=Q0JkaXptbSt3eW5XRElvRUNIZHRpUT09>

Webinar ID: 980 2221 3415

Passcode: 352334

#### By Phone

Telephone: 1 669 900 6833

Webinar ID: 980 2221 3415

Passcode: 352334

International numbers available: <https://ebmud.zoom.us/u/kdplKckQaS>

\*To familiarize yourself with Zoom, please visit <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

**Providing public comment** - *The EBMUD Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.*

- Each speaker is allotted 3 minutes to speak; the Committee Chair has the discretion to amend this time based on the number of speakers
- The Secretary will track time and inform each speaker when the allotted time has concluded
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- The Secretary will call each speaker in the order received

#### In person

- Fill out and submit a blue speaker card which is available in the meeting room

#### Via Zoom

- Use the raise hand feature in Zoom to indicate you wish to make a public comment  
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
  - If you participate by phone, press \*9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic

#### Submitting written comments or materials

- Email written comments or other materials for the Board of Directors to [SecOffice@ebmud.com](mailto:SecOffice@ebmud.com)
- Please indicate the meeting date and agenda item number or non-agenda item topic in the subject of the email. Contact information is optional.
- **Please email by 4 p.m. the day prior to the scheduled regular meeting;** written comments and other materials submitted to the Board of Directors will be filed in the record.

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**To observe the Legislative/Human Resources Committee Meeting,**  
please visit: <https://www.ebmud.com/about-us/board-directors/board-meetings/>

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EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: June 8, 2023  
MEMO TO: Board of Directors  
THROUGH: Clifford C. Chan, General Manager *CCC*  
FROM: Kathy Viatella, Manager of Legislative Affairs *KV*  
SUBJECT: Legislative Report No. 05-23

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on June 13, 2023.

**RECOMMENDED ACTION**

Approve positions on the following bills: 1) Support AB 388 (Connolly) Wildfire and Forest Resilience Action Plan: implementation strategies: roadmap; 2) Oppose unless Amended AB 460 (Bauer-Kahan) State Water Resources Control Board: water rights and usage: interim relief: procedures; 3) Oppose unless Amended AB 754 (Papan) Water management planning: water shortages; 4) Oppose unless Amended AB 755 (Papan) Water: public entity: cost-of-service analysis; 5) Oppose unless Amended AB 1337 (Wicks) State Water Resources Control Board: water diversion curtailment; 6) Support H.R. 2964 (McClain) Wastewater Infrastructure Pollution Prevention and Environmental Safety Act; and 7) Support S. 1350 (Merkley) Wastewater Infrastructure Pollution Prevention and Environmental Safety Act.

**STATE LEGISLATION**

**RECOMMENDED POSITION**

|                              |   |                |
|------------------------------|---|----------------|
| <b>AB 388<br/>(Connolly)</b> | <b>WILDFIRE AND FOREST RESILIENCE<br/>ACTION PLAN: IMPLEMENTATION<br/>STRATEGIES: ROADMAP</b> | <b>SUPPORT</b> |
|------------------------------|---|----------------|

Existing law establishes the Wildfire and Forest Resilience Task Force (Task Force), with specified membership including the California Natural Resources Agency (CNRA), the California Environmental Protection Agency (CalEPA), the Office of Planning and Research (OPR), and the Department of Forestry and Fire Protection (CAL FIRE), county associations, tribal governments and the U.S. Forest Service (USFS), in coordination with other state entities. Existing law requires implementation and regular updating of the Task Force’s plan, entitled “California’s Wildfire and Forest Resilience Action Plan” (Action Plan), annual reporting of the Action Plan’s progress, and alignment of the goals and key actions with the state’s climate

adaptation and resiliency framework. The most recent Action Plan was released on January 8, 2021.

Existing law establishes the Regional Forest and Fire Capacity Program (RFFC Program) to support regional leadership to build local and regional capacity, and develop, prioritize, and implement strategies and projects that create fire adapted communities and landscapes by improving ecosystem health, community wildfire preparedness, and fire resilience. Under the RFFC Program, the Department of Conservation (DOC) is required to provide block grants to regional entities to develop regional strategies that develop governance structures, identify wildfire risks, foster collaboration, and prioritize and implement projects within the region to achieve the Program's goals.

AB 388, as amended on May 18, 2023, would require the DOC, in consultation with the Task Force and its member agencies, to develop guidelines for funding the implementation of regional priority strategies developed pursuant to the RFFC Program. The bill also requires the DOC and Task Force to establish regional investment strategies to identify and align federal, state, local, tribal, and private sector resources that support implementation of regional priority strategies. To achieve the goals and key actions identified in these strategies, the bill allows various state entities to directly award regional block grants to various regional entities, including forest collaboratives and regional partnerships for plan implementation. The bill also requires the DOC to post on its internet website a description, amount and outcome of each regional block grant, and to provide this information to the Task Force.

According to the author, the RFFC Program provides funding for coordination and regional planning, but it does not provide funding for the implementation of the projects in those regional plans. Other grant programs like CAL FIRE's Forest Health Grants Program and the Wildfire Prevention Grant Program are scaled to and directed at the project level rather than landscape-scale. According to the author, "Instead of directing funding at the project level, making block grants available at the regional level would enable and encourage partnerships such as those created through the RFFC process to implement landscape-scale forest restoration and wildfire resilience initiatives."

The bill could benefit EBMUD through its participation in the Upper Mokelumne River Watershed Authority (UMRWA) by establishing guidelines for funding the implementation of regional priority strategies and by allowing the state to provide regional block grants to eligible entities, including regional partnerships and forest collaboratives, to implement these regional plans and strategies. As a joint powers authority, UMRWA would qualify as an eligible entity pursuant to the bill's provisions. It is not anticipated that this bill will impose new costs or requirements on EBMUD or its UMRWA partners. AB 388 is consistent with the 2023 state initiative on climate change specific to wildfire and forest resilience proposals and opportunities for EBMUD to engage through its role in UMRWA.

EBMUD has previously supported measures to facilitate forest health and fire prevention. In 2020, EBMUD supported SB 1348 (Stern) which would have expanded grants for forest health

and fire prevention efforts and made several other beneficial changes to state law and fire management. SB 1348 failed to advance out of the legislature. In 2021, SB 63 (Stern), a substantially similar measure that EBMUD supported, was signed into law. EBMUD also supported AB 679 (Chau) in 2021, which required the CNRA to establish a Good Neighbor Authority Program for the purposes of conducting ecological restoration and fire resiliency projects on national forest lands. That bill was signed into law.

The official support and opposition list to AB 388 is shown below.

Support

California Association of Resource Conservation Districts  
Humboldt and Mendocino Redwood Companies  
The Nature Conservancy  
Sierra Business Council

Opposition

None listed.

**AB 460**                      **STATE WATER RESOURCES CONTROL**    **OPPOSE UNLESS**  
**(Bauer-Kahan)**            **BOARD: WATER RIGHTS AND USAGE:**        **AMENDED**  
**INTERIM RELIEF: PROCEDURES**

Existing law vests the State Water Resources Control Board (SWRCB) with the authority to adopt reasonable rules and regulations to carry out its statutory powers and duties. Existing law also authorizes the SWRCB to adopt emergency regulations in certain conditions of severe drought to prevent 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.

Existing law authorizes the SWRCB to administer water resources and regulate the exercise of water rights by issuing permits and licenses to water users who initiated a water right after 1914 and to impose conditions on the exercise of such rights which are required or authorized by law. Persons who use water under a water right initiated before that date, or under a riparian right, are exempt from the requirement to obtain a permit or license but are subject to certain judicially enforceable limitations on diversion and use. Existing law establishes the Water Rights Fund (Fund), which consists of various fees and penalties. The moneys in the Fund are available upon appropriation by the legislature for the administration of the SWRCB's water rights program.

AB 460, as amended on May 18, 2023, would implement one of the recommendations from the February 2022 Planning and Conservation League (PCL) report titled “Updating California Water Laws to Address Drought and Climate Change.” This bill would:

- authorize the SWRCB to issue in adjudicative proceedings, on its own motion or upon petition of an interested party, an interim relief order to apply or enforce the constitutional prohibition on waste and unreasonable use, water quality objectives, statutory water use policies, and requirements of water rights permits or licenses;
- require SWRCB to conduct a hearing and give at least 10 days prior notice before the hearing on the issuance of an interim relief order, unless the SWRCB makes a finding that “consideration of the matter is urgent”;
- require the SWRCB, in circumstances when the order is issued prior to a hearing, to hold a hearing within 15 days at the request of the party subject to an immediate interim relief order and allow an aggrieved party to seek a writ of mandate no later than 15 days after the hearing;
- by December 31, 2024, requires the SWRCB to adopt regulations providing a process for how hearings will be conducted;
- allow the SWRCB, as part of the interim relief order, to require a diverter to halt all practices deemed harmful, take steps to mitigate the harm, complete technical and monitoring work, fund and participate in studies to evaluate impact of water diversion or use, and reimburse SWRCB for its expenses;
- provide that a person or entity that violates the terms or conditions of a permit, license, certificate or registration or an interim relief order issued by the SWRCB would be subject to civil penalties up to \$10,000 per day and \$2,500 per acre-foot of water diverted without authorization; and
- exempt regulations and interim relief orders from the requirements of the California Environmental Quality Act (CEQA).

AB 460 has been amended three times since it was introduced, although amendments have not addressed EBMUD’s main concerns.

The April 26 amendments authorize the SWRCB to issue an interim relief order before a hearing if the SWRCB finds that immediate compliance is necessary to prevent imminent or irreparable injury to other users, or to instream beneficial uses; require the SWRCB to conduct a hearing within 15 days after issuing an immediate interim relief order; allow an aggrieved party subject to an immediate interim relief order to seek a writ of mandate after the hearing; and delay implementation of the bill until December 31, 2024 so the SWRCB can adopt regulations to govern interim relief order hearings. The May 18 amendments removed two explicit grounds for interim relief: enforcement of the public trust doctrine and enforcement of a statutory requirement that dam owners always release sufficient water for fish.

When staff brought the bill as an information item for the May 9, 2023 Board meeting, staff identified concerns with the April 26 amendments. The May 18 amendments do not adequately

address EBMUD's concerns to narrow the scope of interim relief. In addition, the May 18 amendments do not go far enough to protect due process rights in the event the SWRCB or a third-party seeks to prohibit or alter how EBMUD exercises its water rights.

For these reasons, an oppose unless amended position is recommended to:

- limit the circumstances for issuance of interim relief orders to a violation of pre-existing requirements set forth in any permit or license, any order issued by the SWRCB, or any regulation adopted by the SWRCB;
- require the SWRCB to provide notice of a violation to a water user and allow sufficient time for a water user to develop a response to an interim relief order before a hearing;
- assure the right to a hearing before an interim relief order is issued unless the SWRCB or a third-party petition presents substantial evidence for showing immediate and irreparable harm is likely to occur unless an interim relief order is issued immediately;
- limit the duration of an interim relief order;
- require the SWRCB to follow standards of evidence and consideration of potential harm to the water user resulting from interim relief, as well as harm that would be sustained without interim relief;
- require SWRCB to provide a water user subject to interim relief with a written explanation regarding the need for reports or studies and that burden of reports or studies (including costs) bear a reasonable relationship to the need and the benefits that would be obtained; and
- clarify the right to receive judicial review of interim relief orders under an appropriate standard of review.

An oppose unless amended position is consistent with EBMUD's state legislative initiative to protect and advance EBMUD's water supply reliability and resiliency. With respect to anticipated costs and benefits to EBMUD and its ratepayers, AB 460 could be harmful because of the potential to impact EBMUD's water rights, access to Mokelumne River supplies, management of the Mokelumne River fishery, and wastewater treatment plant operations.

The official support and opposition list to AB 460 is shown below.

#### Support

California Coastkeeper Alliance  
California Environmental Voters  
California Sportfishing Protection Alliance  
California Trout  
California Water Impact Network  
California Water Research  
Clean Water Action  
Clean Water Fund

Defenders of Wildlife  
Earthjustice  
Environmental Working Group  
Friends of The Eel River  
Friends of The River  
Heal the Bay  
Institute for Conservation Advocacy Research and Education  
Karuk Tribe  
Mono Lake Committee  
Natural Resources Defense Council (NRDC)  
North Bay Jobs with Justice  
Northern California Council of Fly Fishers International  
Pacific Coast Federation of Fishermen's Association  
Planning and Conservation League  
Restore the Delta  
San Francisco Baykeeper  
Trout Unlimited  
Trust for Public Land  
Union of Concerned Scientists  
Wholly H2o

Opposition

Agricultural Council of California  
Almond Alliance of California  
Antelope Valley East-kern Water Agency  
Association of California Egg Farmers  
Association of California Water Agencies (ACWA)  
Byron-Bethany Irrigation District  
California Alfalfa & Forage Association  
California Apple Commission  
California Association of Wheat Growers  
California Association of Winegrape Growers  
California Bean Shippers Association  
California Blueberry Association  
California Blueberry Commission  
California Building Industry Association  
California Business Properties Association  
California Cattlemen's Association  
California Chamber of Commerce  
California Cotton Ginners and Growers Association  
California Farm Bureau  
California Fresh Fruit Association  
California Grain & Feed Association

California Manufacturers & Technology Association  
California Municipal Utilities Association  
California Pear Grower Association  
California Seed Association  
Carmichael Water District  
Central Delta Water Agency  
City of Roseville  
Coachella Valley Water District  
Coastside County Water District  
County of San Joaquin  
County of Stanislaus  
Cucamonga Valley Water District  
Desert Water Agency  
Dunnigan Water District  
East Turlock Subbasin Groundwater Sustainability Agency  
El Dorado Irrigation District  
Elsinore Valley Municipal Water District  
Friant Water Authority  
Grower-Shipper Association of Central California  
Humboldt Bay Municipal Water District  
International Bottled Water Association  
Kern County Water Agency  
Kings River Conservation District  
Kings River Water Association  
Lake Arrowhead Community Services District  
Manteca Chamber of Commerce  
McKinleyville Community Services District  
Mesa Water District  
Modesto Irrigation District  
Mojave Water Agency  
Montecito Water District  
Napa County Flood Control and Water Conservation District  
Northern California Water Association  
Oakdale Irrigation District  
Olive Growers Council of California  
Orange County Water District  
Pacific Egg & Poultry Association  
Palmdale Water District  
Pinedale County Water Agency  
Placer County Water Agency  
Regional Water Authority  
Rosedale-Rio Bravo Water Storage District  
Rowland Water District  
San Francisco Public Utilities Commission



actions the agricultural water supplier takes for drought preparedness and to manage water supplies during periods of drought.

AB 754 (Papan), as amended on May 18, 2023, would make changes to the “Making Conservation a California Way of Life” legislative package (AB 1668 and SB 606) that was approved by the legislature and signed into law in 2018, and supported by EBMUD. The “Making Conservation a California Way of Life” legislation significantly changed the state’s approach to conservation, promoting long-term water use efficiency and drought planning. EBMUD sought and secured amendments to the legislation to protect water rights, provide the appropriate balance between local control and state oversight, and preserve local authority for drought and water use planning and implementation. The regulatory process to implement the legislation is currently underway.

AB 754 is intended to increase water conservation before urban and agricultural water suppliers face a drought crisis and help ensure that more water is stored in reservoirs for environmental benefits rather than drawing down reservoirs as a first response to drought. To accomplish this, AB 754 would do the following:

- Require urban and agricultural water suppliers that rely on a single reservoir for at least 50 percent of their water supply to include water shortage response actions in its UWMP or AWMP, as applicable, that are implemented when water storage in the reservoir falls below specified levels. This would be in addition to existing requirements to prepare a UWMP and a WSCP that includes procedures for an annual water supply and demand assessments as well as response, enforcement, and communication actions that are intended to make urban water suppliers more drought resilient.
- Require urban and agricultural water suppliers that rely on a single reservoir for at least 50 percent of water supply to develop a target shortage curve for that reservoir sufficient to satisfy water users, ecological stream flow requirements, and water quality needs for the current year and one dry year.
- Require the specified urban and agricultural water suppliers to compare reservoir levels every month to the reservoir’s target shortage curve and determine if the target storage levels are met.
- Require, when the target storage levels are not met that water shortage response actions (conservation measures) be taken corresponding to whether the reservoir’s water supply is 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, or greater than 50 percent below the reservoir’s target water supply curve.
- Require the inclusion of information on water demand management measures that have a significant impact on water used by downstream water rights holders in a UWMP.

According to the author, “Drought plans and water shortage contingency plans only trigger when total water supply is short. As a result, conservation only occurs in a crisis. Moreover, carryover storage in reservoirs is an important resource not only for ensuring reliable water supply but for keeping cold pools for fish and ensuring ecological stream health. Once reservoir storage becomes too low, shallow water heats up and the hot water impacts water quality in downstream

ecosystems due to temperature pollution. Because water shortage contingency plans look at the entire water supply, reservoirs can become drained well before a shortage contingency plan is triggered.” The author contends that AB 754 will require urban and agricultural water suppliers to initiate conservation when reservoir levels drop too low rather than wait for a crisis to conserve.

AB 754 applies to urban water suppliers for which a single reservoir is considered to constitute at least 50 percent of the urban water supplier’s total water supply. While EBMUD operates Pardee and Camanche reservoirs as a joint system, EBMUD could be subject to AB 754’s requirements as either Pardee Reservoir or Camanche Reservoir could be considered as constituting at least 50 percent of EBMUD’s water supply depending on conditions.

AB 754’s mandates raise significant policy issues including concerns that: 1) a one-size fits all mandate for reservoir operations that trigger customer conservation measures when total water supply may be sufficient to meet demand would cause confusion for customers and does not account for EBMUD’s Pardee and Camanche reservoirs operated jointly and managed adaptively for water supply, flood control, and environmental stewardship; 2) in many instances, flood control operations are governed by the U.S. Army Corps of Engineers (USACE) rules not individual water suppliers; and 3) requirements for urban water suppliers to report how water demand management measures impact downstream water right holders inappropriately inserts water rights issues into UWMPs.

The first major issue of concern involves the bill’s mandates regarding urban water supplier’s that have a single reservoir constituting at least 50 percent of total water supply. Depending on the circumstances and how the bill is implemented either Pardee or Camanche reservoirs could be considered as constituting at least 50 percent of EBMUD’s total water supply. EBMUD operates these reservoirs as a joint system that is adaptively managed for flood control and environmental stewardship. In early May, Camanche Reservoir was at less than 50 percent capacity to account for expected snow melt and to maintain cold water pool in Pardee Reservoir that is critical to the Mokelumne River fishery.

Under AB 754, EBMUD could be forced to impose “demand management measures” including conservation requirements on its customers at a time when conservation is not needed. Alternatively, EBMUD could decide to release water from Pardee Reservoir into Camanche Reservoir to avoid imposing conservation mandates on customers. However, such releases would endanger EBMUD’s ability to maintain a cold-water pool for the Mokelumne River fishery contradicting one of the author’s stated benefits of the bill.

In addition, imposing a one-size fits all approach to reservoir management and conservation takes away appropriate local control and authority for drought and water shortage contingency planning that accounts for the differences among urban water suppliers and their water supplies. Local control was a hallmark of the “Making Conservation a California Way of Life” legislative package that recognized those differences. The bill’s requirements are also duplicative of existing requirements and planning measures. Urban water suppliers are required to prepare an

annual water supply and demand assessment and submit an annual water shortage report to DWR every year. Suppliers must, and do, perform ongoing reassessments of water supply and demand conditions throughout the year.

The second issue is the potential conflict the bill creates with the multiple uses of reservoirs, including flood control, and how flood control operations are governed. The bill would require urban water suppliers to consider specific factors in determining target carryover storage levels. However, many water suppliers and owners/operators of reservoirs must abide by USACE flood control rules and regulations and cannot consider the factors specified in the bill when determining whether to release water from reservoirs for flood control purposes.

The third issue of concern is the insertion of language mentioning water rights in a section of law relating to UWMPs. The bill would require UWMPs, as part of a narrative describing water demand management measures, to include a description of “other demand management measures that have a significant impact on water used by downstream water rights holders.” It is unclear what other demand management measures this refers to, why this has been included, or what the impact would be.

AB 754’s goal to protect storage for the benefit of environmental flows and cold water pools is consistent with EBMUD’s mission and efforts to protect the Mokelumne River fishery. Also, EBMUD shares the bill’s goal to advance demand management to conserve stored water. However, AB 754 does not take into account the integrated nature of water management, the critical nature of local control and authority in water use planning, and how reservoirs must be operated for flood control and other purposes, and pending water use efficiency regulations.

For these reasons, an oppose unless amended position is recommended to remove the current mandates and reference to water rights and instead require urban water suppliers to include additional information about water supply reservoirs and the operations of those reservoirs in UWMPs or annual water supply and demand assessments. Alternatively, the amendments could exclude reservoirs on a single stream that are jointly managed by a single water agency to provide environmental benefits and flood control in addition to water supply.

Regarding anticipated costs and benefits to EBMUD and its ratepayers, AB 754 could be harmful to EBMUD ratepayers because of the potential to impact EBMUD’s reservoir operations, the Mokelumne River fishery, and requiring customers conserve water when EBMUD has enough water supply to meet demand.

An oppose unless amended position is consistent with EBMUD’s 2023 state initiative to protect and advance EBMUD’s interests in the context of its water supply reliability and resiliency, including the use of recycled water, water rights and the Mokelumne River fishery.

EBMUD has previously taken positions on legislation related to water management planning as well as legislation related to reservoir operations. EBMUD supported AB 1668 (Friedman) and SB 606 (Hertzberg) to implement the Brown administration’s “Making Water Conservation a

California Way of Life” framework. Both bills were signed into law in 2018 (Chapter 15 and Chapter 14, respectively). Earlier this year, EBMUD’s Board adopted a support position on AB 30 (Ward) to ensure the Department of Water Resources can continue to improve atmospheric prediction models which could allow for more flexibility in reservoir operations to support water management decisions and flood mitigation. AB 30 is pending in the legislature.

The official support and opposition list to AB 754 is shown below.

Support

California Coastkeeper Alliance  
Coachella Valley Waterkeeper  
Humboldt Baykeeper  
Inland Empire Waterkeeper  
Los Angeles Waterkeeper  
Monterey Waterkeeper  
Orange County Coastkeeper  
Russian Riverkeeper  
San Diego Coastkeeper  
Santa Barbara Channelkeeper  
Sierra Club California  
The Otter Project

Opposition

Association of California Water Agencies  
California Municipal Utilities Association  
Irvine Ranch Water District

**AB 755  
(Papan)**

**WATER: PUBLIC ENTITY:  
COST-OF-SERVICE ANALYSIS**

**OPPOSE UNLESS  
AMENDED**

The California Constitution (Proposition 218 and Proposition 26) place restrictions on how local agencies use fees, charges, or special assessments, including property-related services, to cover the cost of providing services. Local agencies bear the burden of proving that levies, charges, or other exactions are not taxes and that the amount charged is no more than necessary to cover the reasonable costs of the government activity or service provided. Existing law requires public agencies providing utility service to complete a cost-of-service study at least once every 10 years that addresses the cost of providing service to public schools, as well as requires that water and wastewater connection fees and capacity charges be solely expended for the purposes they are collected.

AB 755, as amended on May 18, 2023, is intended to provide a method to determine how high-water users are driving up water system costs. Specifically, the bill:

- requires public entities that provide retail water service and are urban water suppliers that conduct a cost-of-service analysis (also called a cost-of-service study) to identify the “total incremental costs incurred by all the major water users in the single-family residential class” and the “total incremental costs that would be avoided if major water users met a specified efficiency goal;”
- requires urban water suppliers to include in their cost-of-service analysis information about the total incremental costs incurred by major water users in the single-family residential class and the costs that could be avoided if those users met a specified efficiency goal; and
- defines various terms for purposes of the bill including:
  - cost-of-service analysis is the analysis conducted to determine water usage patterns and demands placed on the system by various customer classes;
  - efficiency goal as the standards for outdoor residential use, outdoor commercial, industrial, and institutional use, and water loss volume adopted by the State Water Resources Control Board applied to an individual household;
  - incremental costs as the costs of water service that an urban water supplier incurs as a result of the use of water by the suppliers’ major water users, including examples specified in the bill such as demand management measures, uses of recycled water, securing dry year supplies, and energy costs for delivering water; and
  - major water users as the top 10 percent of water users in a given customer class since the last cost-of-service analysis.

According to the author, “all too often, the maximum demand for water is driven by the customers that use the most, and affluent single family residences are notorious for using excessive amounts of water for outdoor irrigation...the largest water users are a driving force behind the public utility’s need for larger supply, increased infrastructure, and efforts to conserve the system’s water. These investments increase the public water utility’s overall costs and can raise rates for all customers.” The author contends that many of the public utilities costly investments are unnecessary for people who conserve water and keep demand low... “as a result, customers who conserve may be required to subsidize rising costs for those who use the most.” AB 755’s requirements will “shine an important light on the root cause of rising costs” and by publicizing information on what the overall cost savings could be if major water users had to meet efficiency targets will create additional incentives for major water users to conserve.

Issues of concern with AB 755 fall into three main categories: 1) the bill forces water agencies to introduce uncertainty in their cost-of-service analysis by reporting on the hypothetical incremental cost savings that could be achieved if the largest users were to become more efficient, thus potentially creating a significant liability for urban water agencies under Proposition 218; 2) the bill wrongly assumes that the largest users are subsidized by the more efficient water users and driving up water rates; and 3) the bill would require water agencies to report on individual outdoor water use which runs contrary to current law and pending regulations which will require water agencies to report an overall water use objective for the agency’s service area.

The first major issue is that the bill does not adequately consider the constitutional requirements urban water suppliers must meet to ensure that rates and fees are reasonable and proportional to the benefit customers receive. Detailed cost-of-service studies ensure that rates and fees are allocated in a manner that is reasonable and proportional. AB 755 would require urban water suppliers to include hypothetical information in cost-of-service studies about costs that could be avoided if major water users met a specified efficiency goal. EBMUD uses cost-of-service studies to set equitable rates and allocate costs, so customers are paying a proportionate share of costs and one set of customers are not subsidizing another in accordance with constitutional requirements. AB 755 would force urban water suppliers, including EBMUD, to introduce a hypothetical analysis in its cost-of-service studies, providing uncertainty in the study that could then be used to challenge water rates under Proposition 218.

The second issue is the bill wrongly assumes that the largest users are subsidized by more efficient water users and driving up water rates. As previously discussed, EBMUD sets equitable rates so that the largest users pay a proportionate share for their water use. Assuming the highest water users alone are the reason for increasing rates oversimplifies the problem of rising costs. Aging infrastructure and the need to diversify supplies to address the impacts of climate change are some of the main drivers of cost.

The third issue is the bill would inappropriately require urban water suppliers to apply a water use efficiency goal to individual households to report on the incremental cost savings in a cost-of-service study. This approach is inconsistent with the intent of the “Making Conservation a California Way of Life” legislation that EBMUD supported to require urban water suppliers to report an overall water use objective. Having to track and report individual household water use efficiency would be onerous and costly.

An oppose unless amended position on AB 755 is recommended to develop an alternative approach to report on the highest users of water or the incremental costs of water that would not insert uncertainty in cost-of-service studies and subject urban water suppliers to Proposition 218 liability. For example, urban water suppliers could include information on the largest users in cost-of-service studies but not report on the incremental cost savings if the largest users become more water use efficient. Additionally, the amendments would remove the language requiring urban water suppliers to track an individual household’s water use efficiency.

Regarding anticipated costs and benefits to EBMUD and its ratepayers, AB 755 could be harmful to EBMUD ratepayers as it would insert uncertainty into cost-of-service studies that would expose EBMUD to liability and rate challenges under Proposition 218. In addition, having to report individual household water use efficiency would result in increased costs to EBMUD.

A position on AB 755 would be consistent with EBMUD’s 2023 legislative initiative to protect and advance EBMUD’s interests in the context of its water supply reliability and resiliency.

EBMUD has previously taken positions on legislation related to Proposition 218. In 2020, EBMUD supported SB 1386 (Moorlach) that amended the Proposition 218 Omnibus Implementation Act to clarify that property-related service charges may include funding water services related to fire protection. SB 1386 was signed into law (Chapter 240 of 2020).

Existing law authorizes a public entity that supplies water at retail or wholesale within its service area to adopt, in accordance with specified procedures, and enforce a water conservation program.

The official support and opposition list to AB 755 is shown below.

### Support

California Coastkeeper Alliance (sponsor)  
Coachella Valley Waterkeeper  
Community Water Center  
Humboldt Baykeeper  
Inland Empire Waterkeeper  
laane (Los Angeles Alliance for A New Economy)  
Mono Lake Committee  
Monterey Waterkeeper  
Orange County Coastkeeper  
River in Action  
Russian Riverkeeper  
San Diego Coastkeeper  
Santa Barbara Channelkeeper  
Save the Sonoma Coast  
SEE (Social Eco Education)  
Somos Familia Valle  
South Yuba River Citizens League  
Western Center on Law & Poverty  
Yuba River Waterkeeper

### Opposition

Association of California Water Agencies  
California Municipal Utilities Association  
Irvine Ranch Water District

**AB 1337**                      **STATE WATER RESOURCES CONTROL**    **OPPOSE UNLESS**  
**(Wicks)**                      **BOARD: WATER DIVERSION**                      **AMENDED**  
   **CURTAILMENT**

Existing law vests the State Water Resources Control Board (SWRCB) with the authority to adopt reasonable rules and regulations to carry out its statutory powers and duties. Existing law also authorizes the SWRCB to adopt emergency regulations in certain conditions of severe drought to prevent 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.

Existing law authorizes the SWRCB to administer water resources and regulate the exercise of water rights by issuing permits and licenses to water users who initiated a water right after 1914 and to impose conditions on the exercise of such rights which are required or authorized by law. Persons who use water under a water right initiated before that date, or under a riparian right, are exempt from the requirement to obtain a permit or license but are subject to certain enforceable limitations on diversion and use. Existing law establishes the Water Rights Fund (Fund), which consists of various fees and penalties. The moneys in the Fund are available upon appropriation by the legislature for the administration of the SWRCB’s water rights program.

AB 1337 (Wicks), as amended on May 18, 2023, would:

- authorize the SWRCB to issue a curtailment order for any diversion regardless of basis of right when water is not available under the diverter’s priority of right;
- direct the SWRCB to adopt regulations to implement its curtailment order authority; and
- make failure to comply with a curtailment order a trespass and authorize the SWRCB to issue a cease-and-desist order when a water right holder fails to curtail diversion when water is unavailable under the water right’s holder’s priority of right.

AB 1337 has been amended several times since it was introduced, and the amendments have narrowed the scope of the bill to clarify the SWRCB has the authority to curtail pre-1914 water right holders in response to a recent appellate case, *California Water Curtailment Cases* (2022) 83 Cal.App.5<sup>th</sup> 164. Certain Delta water agencies challenged the SWRCB’s authority, under Water Code § 1052(a), to curtail pre-1914 water right holders. The Court of Appeal held that the SWRCB did not have the authority to curtail pre-1914 water right holders under Section 1052(a), but suggested that, had the SWRCB issued the curtailment order under an emergency regulation rather than Section 1052(a), it may have had the authority to curtail pre-1914 water right holders. AB 1337 was substantially amended on April 20 to grant new and explicit statutory authority for the SWRCB to curtail water rights “regardless of basis of right”—which effectively extends curtailment authority to pre-1914 and riparian rights. The May 18 amendments require the SWRCB to adopt regulations for issuing curtailment orders. AB 1337, for the first time, permits the SWRCB to curtail during times other than drought emergencies, whenever water is “not available under the diverter’s priority of right.”

There are two remaining issues of concern with AB 1337 for EBMUD. First, the April 20 amendments would permit the SWRCB to issue curtailment orders during any water year type “when water is not available under the diverter’s priority of right.” Curtailment is a significant issue for EBMUD even under SWRCB’s existing authority, which is limited to emergency drought conditions. Outcomes are unpredictable because the SWRCB decides whether water is available for diversion using a complicated methodology. Expanding curtailment authority will increase EBMUD’s exposure to this risk. Second, the Board could issue a curtailment order and require EBMUD to stop diverting into storage cold water runoff during abnormally low rainfall or dry years—but outside a drought emergency—which could be harmful to the Mokelumne River fishery.

An oppose unless amended position is recommended to:

- limit the issuance of curtailment orders to critically dry years;
- define critically dry years to be determined using year-types in existing water rights decisions for a watershed or a stream for which curtailments are being considered (e.g., the Mokelumne is subject to SWRCB D-1641 which defines critically dry year based on Mokelumne-specific conditions); and
- require the regulations to develop “water year type” definitions that are watershed-specific or stream-specific (where they do not exist) and to consider watershed priorities and existing settlement agreements or contractual arrangements.

An oppose unless amended position on AB 1337 is consistent with our state legislative initiative to protect and advance EBMUD’s water supply reliability and resiliency. Regarding anticipated costs and benefits to EBMUD and its ratepayers, AB 1337 could be harmful to EBMUD ratepayers because of the potential impact to EBMUD’s access to Mokelumne River water supplies and harm to the Mokelumne River fishery.

The official support and opposition list to AB 1337 is shown below.

#### Support

California Coastkeeper Alliance (co-sponsor)  
Planning and Conservation League (co-sponsor)  
Mono Lake Committee  
Ban SUP (single use plastic)  
California Environmental Voters  
California Trout  
Clean Water Action  
Coachella Valley Waterkeeper  
Defenders of Wildlife  
Friends of the Eel River  
Friends of the River

Humboldt Baykeeper  
Inland Empire Waterkeeper  
Los Angeles Waterkeeper  
Mono Lake Committee  
Monterey Waterkeeper  
Orange County Coastkeeper  
Russian Riverkeeper  
San Diego Coastkeeper  
Santa Barbara Channelkeeper  
South Yuba River Citizens League  
Trout Unlimited  
Union of Concerned Scientists  
Wholly H2O  
Yuba River Waterkeeper

Opposition

Agricultural Council of California  
Antelope Valley East Kern Water Agency  
Association of California Water Agencies  
Byron-Bethany Irrigation District  
California Association of Winegrape Growers  
California Building Industry Association  
California Business Properties Association  
California Cattlemen's Association  
California Chamber of Commerce  
California Farm Bureau Federation  
California Manufacturers & Technology Association  
California Municipal Utilities Association  
California Special Districts Association  
Carmichael Water District  
Central Delta Water Agency  
City of Corona  
City of Roseville  
Coachella Valley Water District  
Coastside County Water District  
County of San Joaquin  
Cucamonga Valley Water District  
Desert Water Agency  
Dunnigan Water District  
East Turlock Subbasin Groundwater Sustainability Agency  
Elk Grove Water District  
Elsinore Valley Municipal Water District  
Friant Water Authority

Humboldt Bay Municipal Water District  
Imperial Irrigation District  
Irvine Ranch Water District  
Kern County Water Agency  
Lake Arrowhead Community Services District  
Manteca Chamber of Commerce  
McKinleyville Community Services District  
Mesa Water District  
Metropolitan Water District of Orange County  
Modesto Irrigation District  
Mojave Water Agency  
Montecito Water District  
Napa County Flood Control and Water Conservation District  
Northern California Water Association  
Oakdale Irrigation District  
Placer County Water Agency  
Regional Water Authority  
Rosedale-Rio Bravo Water Storage District  
Rowland Water District  
San Francisco Public Utilities Commission  
San Gabriel Valley Municipal Water District  
San Geronimo Pass Water Agency  
San Juan Water District  
San Luis Delta-Mendota Water Authority  
Santa Clarita Valley Water Agency  
Santa Margarita Water District  
Solano County Water Agency  
Solano Irrigation District  
South San Joaquin Irrigation District  
Southern California Water Coalition  
Stockton East Water District  
Tehachapi-cummings County Water District  
Three Valleys Municipal Water District  
Tranquility Irrigation District  
Tri-county Water Authority  
Tuolumne County Water Agency  
Tuolumne Utilities District  
Turlock Irrigation District  
United Water Conservation District  
Valley Center Municipal Water District  
Walnut Valley Water District  
Western Growers Association  
Western Municipal Water District  
Wine Institute

Yuba Water Agency

| <b><u>FEDERAL LEGISLATION</u></b>                        |  | <b><u>RECOMMENDED POSITION</u></b> |
|--|--|------------------------------------|
| <b>H.R. 2964<br/>(McClain)<br/>S. 1350<br/>(Merkley)</b> | <b>WASTEWATER INFRASTRUCTURE<br/>POLLUTION PREVENTION AND<br/>ENVIRONMENTAL SAFETY ACT</b> | <b>SUPPORT</b>                     |

H.R. 2964 (McClain) and S. 1350 (Merkley) are identical companion measures known as the Wastewater Infrastructure Pollution Prevention and Environmental Safety Act (WIPPES Act) and are substantially similar to H.R. 4602 (Lowenthal) and S. 3956 (Merkley), on which the Board adopted “support” positions in 2022. The WIPPES Act is intended to address the problem of non-flushable wipes being flushed into, and creating obstructions in, sewer and wastewater systems.

The WIPPES Act would create a national standard for the labeling of non-flushable disposable wet wipes, essentially adopting national wet wipe labeling requirements similar to California’s requirements established by AB 818 (Bloom) in 2021, which EBMUD supported. The WIPPES Act would primarily do two things: 1) require manufacturers of non-flushable wet wipes to label the products clearly and conspicuously with “DO NOT FLUSH” notices and symbols; and 2) set fines for not complying with the labeling requirements. The WIPPES Act would also preempt state “DO NOT FLUSH” labeling requirements. However, as the WIPPES Act essentially adopts California’s labeling requirements, the WIPPES Act would apply California’s requirements nationwide, so the WIPPES Act preemption language is not of concern.

According to the California Association of Sanitation Agencies, due to the lack of proper disposal instructions “consumers unwittingly end up flushing these single-use, synthetic wipes that can clog pipes, pumps, and treatment equipment...establishing commonsense ‘Do Not Flush’ labeling practices designed to address this problem at the source” helps ensure these wipes do not make their way into wastewater systems.

When items, such as wet wipes, that are not designed for safe disposal in the sewer system are flushed, these items can cause sewer blockages and backups at homes, businesses and in sewer collection systems, as well as potentially damage sewer lines and lead to costly sanitary sewer overflows. These materials can also clog machinery at the wastewater treatment plant, resulting in increased costs for sewage treatment.

For EBMUD, significant amounts of fibrous material have been found when cleaning the digesters at the Main Wastewater Treatment Plant. This material is likely the result of non-flushable materials, such as wet wipes, being flushed into the system. The fibrous material catches grit and retains it in the digesters, causing problems for digester operations.

The WIPPES Act would help reduce the amount of non-flushable wet wipes being disposed into sewer systems, including EBMUD's wastewater treatment system, by ensuring that non-flushable wet wipes are properly labeled.

Regarding anticipated costs and benefits to EBMUD and its ratepayers, benefits are anticipated in terms of reducing the amount of maintenance required for cleaning pumps and other equipment that is currently required to deal with non-flushable material. Some cost savings could accrue in the form of reduced maintenance and decreased disposal costs. Additional costs are not expected to accrue because of the measure.

Support for H.R. 2964 and S. 1350 is consistent with EBMUD's support of H.R. 4602 (Lowenthal) and S. 3956 (Merkley) in 2022. Support for this measure is also consistent with support for state measures intended to reduce the amount of non-flushable wipes that are flushed into the sewer system, most recently AB 818 (Bloom), Chapter 590 of 2021, which established state labeling requirements for non-flushable wipes.

Consistent with other federal measures, there is no official support and opposition list for H.R. 2964 and S. 1350.

CCC:KCV:jw/dm

#### Attachments

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AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY MARCH 2, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 388**

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**Introduced by Assembly Member Connolly**

February 2, 2023

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An act to amend Section ~~4770~~ 4208 of, and to add Section ~~4771.5 to~~ 4208.2 to, the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 388, as amended, Connolly. Wildfire and Forest Resilience Action Plan: implementation strategies: roadmap.

Existing law requires the Wildfire and Forest Resilience Task Force, including the Natural Resources Agency, the California Environmental Protection Agency, the Office of Planning and Research, and the Department of Forestry and Fire Protection, in coordination with certain public agencies, to develop a comprehensive implementation strategy to track and ensure the achievement of the goals and key actions identified in the Wildfire and Forest Resilience Action Plan, as provided.

*Existing law establishes the Regional Forest and Fire Capacity Program to support regional leadership to build local and regional capacity and develop, prioritize, and implement strategies and projects that create fire adapted communities and landscapes by improving ecosystem health, community wildfire preparedness, and fire resilience. Under the program, the Department of Conservation is required to provide block grants to regional entities to develop regional strategies that develop governance structures, identify wildfire risks, foster collaboration, and prioritize and implement projects within the region*

to achieve the program’s goals. Existing law requires that regional priority strategy development be in coordination with public landowners and other relevant forest and fire planning efforts in wildfire and forest resiliency planning.

~~This bill would~~ *would, by January 1, 2025, require the Director of Forestry and Fire Protection, Department of Conservation, in consultation with the task force, force and its member agencies, to establish a roadmap for developing and deploying larger landscape level projects to contribute to the achievement of the goals outlined in the implementation strategy: guidelines for funding the implementation of the regional priority strategies, as provided, and to establish regional investment strategies to identify and align resources that support implementation of regional priority strategies that contribute to the goals and key actions identified in the implementation strategy. The bill would authorize the director conservancies, departments, and boards within the Natural Resources Agency to directly award regional block grants to eligible regional entities, forest collaboratives, and partnerships to implement regional plans, strategies, agreements, and initiatives. The bill would authorize the department to transfer funding to other state agencies and departments to achieve the goals and key actions identified in the implementation strategy. The bill would require the department to provide the task force and to post on its internet website a description, amount, and outcome of each regional block grant and fund transfer provided under the above provisions. grant.*

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

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

- 1 SECTION 1. (a) The Legislature finds and declares both of
- 2 the following:
- 3 (1) High severity wildfire, tree mortality, and other major forest
- 4 disturbances increasingly occur across tens of thousands to
- 5 hundreds of thousands of acres of landscapes, yet funding awards
- 6 remain primarily scaled to, and directed at, a project level of
- 7 thousands of acres of landscape.
- 8 (2) The state is encouraging and funding regional collaboration
- 9 and planning processes to develop landscape scale solutions to
- 10 address high-severity wildfire and forest ~~health.~~ *health, including*
- 11 *watershed and habitat restoration.*

1 (b) It is the intent of the Legislature to match funding levels to  
2 the scale of the problem and the scale of regionally developed  
3 plans and projects.

4 ~~SEC. 2. Section 4770 of the Public Resources Code is amended~~  
5 ~~to read:~~

6 ~~4770. For purposes of this article, the following definitions~~  
7 ~~apply:~~

8 (a) ~~“Agreement” has the same meaning as set forth in Section~~  
9 ~~4810.~~

10 (b) ~~“Forest collaborative” has the same meaning as set forth in~~  
11 ~~Section 4810.~~

12 (c) ~~“Task force” has the same meaning as the task force~~  
13 ~~described in Section 4005.~~

14 *SEC. 2. Section 4208 of the Public Resources Code is amended*  
15 *to read:*

16 4208. For purposes of this article, the following definitions  
17 apply:

18 (a) “Department” means the Department of Conservation.

19 (b) “Eligible coordinating organization” means a local  
20 government, tribal government, resource conservation district,  
21 joint powers authority, or nongovernmental organization with a  
22 history of providing technical assistance and demonstrated capacity  
23 to coordinate regional partners across the state.

24 (c) *“Forest collaborative” has the same meaning as set forth*  
25 *in Section 4810.*

26 (d) *“Implementation strategy” means the comprehensive*  
27 *implementation strategy developed under Section 4771.*

28 (e)

29 (e) “Program” means the Regional Forest and Fire Capacity  
30 Program.

31 (d)

32 (f) “Regional entity” means a state conservancy, local  
33 government, tribal government, resource conservation district,  
34 joint powers authority, or nongovernmental organization with a  
35 history of implementing related projects, demonstrated capacity  
36 to work across regional partners, and ability to serve as fiscal  
37 administrators for the program.

38 (e)

39 (g) “Statewide implementation” means identifying and  
40 supporting regional entities in every part of the state that contains

1 or is adjacent to a very high or high fire hazard severity zone  
2 identified by the State Fire Marshal pursuant to Section 51178 of  
3 the Government Code or Article 9 (commencing with Section  
4 4201).

5 ~~SEC. 3. Section 4771.5 is added to the Public Resources Code,~~  
6 ~~to read:~~

7 ~~4771.5.—~~

8 *SEC. 3. Section 4208.2 is added to the Public Resources Code,*  
9 *to read:*

10 *4208.2. (a) The ~~director, department,~~ in consultation with the*  
11 *task force, force and its member agencies, by January 1, 2025,*  
12 *shall establish a roadmap for developing and deploying larger*  
13 *landscape level projects to contribute to the achievement of the*  
14 *goals outlined in the implementation strategy developed pursuant*  
15 *to Section 4771. both of the following:*

16 *(1) Guidelines for funding the implementation of regional*  
17 *priority strategies developed pursuant to Section 4208.1 that shall*  
18 *include monitoring and reporting requirements and other criteria*  
19 *determined as necessary to carry out the purposes of this article.*

20 *(2) Regional investment strategies to identify and align federal,*  
21 *state, local, tribal, and private sector resources that support*  
22 *implementation of regional priority strategies that contribute to*  
23 *achievement of the goals and key actions identified in the*  
24 *implementation strategy.*

25 *(b) To achieve the goals and key actions identified in the*  
26 *regional priority strategies, implementation strategy, the director*  
27 *and regional investment strategies, conservancies, departments,*  
28 *and boards within the Natural Resources Agency may directly*  
29 *award regional block grants to eligible regional entities, forest*  
30 *collaboratives, and partnerships to implement regional plans,*  
31 *strategies, agreements, and initiatives, including, but not limited*  
32 *to, regional priority strategies developed pursuant to Section 4208.1*  
33 *and multijurisdictional landscape-scale projects.*

34 ~~*(c) The department may transfer funding to other state agencies*~~  
35 ~~*or departments to achieve the goals and key actions identified in*~~  
36 ~~*the implementation strategy.*~~

37 ~~*(d)*~~

38 *(c) The department shall provide the task force and shall post*  
39 *on its internet website a description, amount, and outcome of each*

1 regional block ~~grant or fund transfer provided pursuant to this~~  
2 ~~section.~~ *grant.*

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AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY APRIL 26, 2023

AMENDED IN ASSEMBLY MARCH 30, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 460**

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**Introduced by Assembly Member Bauer-Kahan  
(Principal coauthor: Assembly Member Friedman)**

February 6, 2023

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An act to amend Sections 1055, 1055.2, 1126, and 1846 of, to add Sections 1051.2 and 1055.5 to, and to add Chapter 3.6 (commencing with Section 1115) to Part 1 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 460, as amended, Bauer-Kahan. State Water Resources Control Board: water rights and usage: interim relief: procedures.

(1) Existing law authorizes the State Water Resources Control Board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water.

This bill would authorize the board, in conducting specified investigations or proceedings to inspect the property or facilities of a person or entity, as specified. The bill would authorize the board, if consent is denied for an inspection, to obtain an inspection warrant, as specified, or in the event of an emergency affecting public health and

safety, to conduct an inspection without consent or a warrant. Because the willful refusal of an inspection lawfully authorized by an inspection warrant is a misdemeanor, this bill would impose a state-mandated local program by expanding the application of a crime.

(2) Existing law authorizes the executive director of the board to issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to specified law, and requires the complaint to be served by personal notice or certified mail.

This bill would expand methods of notice for those purposes to include notice in accordance with the manner of service of a summons under specified provisions of the Code of Civil Procedure.

(3) Under existing law, the diversion or use of water other than as authorized by specified provisions of law is a trespass, subject to specified civil liability.

This bill would require the State Water Resources Control Board to adjust for inflation, by January 1 of each year, beginning in 2025, the amounts of civil and administrative liabilities or penalties imposed by the board in water right actions, as specified.

(4) The California Constitution requires the reasonable and beneficial use of water. ~~Under the public trust doctrine, the State Water Resources Control Board, among other state agencies, is required to take the public trust into account in the planning and allocation of water resources and to protect the public trust whenever feasible.~~ The board and the California regional water quality control boards are required to set forth water quality objectives in state and regional water quality control plans. Existing law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available upon appropriation by the Legislature for the administration of the board's water rights program.

~~Existing law requires that the owner of any dam allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around, or through the dam, to keep in good condition any fish that may be planted or exist below the dam, as specified.~~

This bill would authorize the board to issue, on its own motion or upon the petition of an interested party, an interim relief order to a diverter or user of water in adjudicative proceedings to apply or enforce specified provisions of law related to water rights and quality. The bill would provide that a person or entity that violates any interim relief order issued by the board would be liable to the board for a civil penalty

in an amount not to exceed the sum of \$10,000 for each day in which a violation occurs and \$2,500 for each acre-foot of water diverted in violation of the interim relief order. The bill would require these funds to be deposited in the Water Rights Fund. The bill would make these provisions operative on January 1, 2025.

(5) Existing law authorizes any party aggrieved by any decision or order of the State Water Resources Control Board, not later than 30 days from the date of final action by the board, to file a petition for a writ of mandate for judicial review of the decision or order. Existing law requires a court to exercise its independent judgment on the evidence in any case involving the judicial review of certain cease and desist orders issued by the board and in any other case in which the court is authorized by law to exercise its independent judgment on the evidence.

This bill would require an aggrieved party to file a petition for reconsideration with the board to exhaust the party's administrative remedies before filing an action for judicial review of the board's decision or order under specified circumstances. The bill would require the scope of review of a board decision or order regarding interim relief to be the same as for a court of appeal review of a superior court decision granting or denying a preliminary injunction. The bill would generally prohibit, except as provided, a legal or equitable process from issuing in any proceeding in a court against the board or an officer of the board to review, prevent, or enjoin certain adjudicative proceedings or a decision or order of the board before a final decision or order of the board is issued.

(6) Existing law authorizes a person or entity in violation of a term or condition of a permit, license, certificate, or registration issued by, or an order or regulation adopted by, the board to be held civilly liable for an amount not to exceed \$500 for each day that the violation occurs.

The bill would increase the amount of civil liability for the above-described violations to \$1,500 for each day in which the violation occurs, \$10,000 for each day in which the violation occurs, and \$2,500 for each acre-foot of water diverted or used that amounted to the violation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1051.2 is added to the Water Code, to  
2 read:

3 1051.2. (a) In conducting an investigation or proceeding  
4 specified in Section 275 or 1051, or in Article 7 (commencing with  
5 Section 13550) of Chapter 7 of Division 7, the board may inspect  
6 the property or facilities of a person or entity to ascertain whether  
7 the purposes of Section 100 and this division are being met or to  
8 ascertain compliance with any permit, license, certification,  
9 registration, decision, order, or regulation issued under Section  
10 275, this division, or Article 7 (commencing with Section 13550)  
11 of Chapter 7 of Division 7.

12 (b) If consent to inspect is denied or otherwise withheld, the  
13 board is authorized to obtain an inspection warrant pursuant to the  
14 procedure set forth in Title 13 (commencing with Section 1822.50)  
15 of Part 3 of the Code of Civil Procedure for purposes of an  
16 inspection under this section. However, in the event of an  
17 emergency affecting the public health or safety, an inspection may  
18 be performed without consent or the issuance of a warrant.

19 SEC. 2. Section 1055 of the Water Code is amended to read:

20 1055. (a) The executive director of the board may issue a  
21 complaint to any person or entity on which administrative civil  
22 liability may be imposed pursuant to Section 1052, Section 1119,  
23 Article 4 (commencing with Section 1845) of Chapter 12 of Part  
24 2, or Section 5107. The complaint shall allege the act or failure to  
25 act that constitutes a trespass or violation, the provision of law  
26 authorizing civil liability to be imposed, and the proposed civil  
27 liability.

28 (b) The complaint shall be served by personal notice or certified  
29 mail, or in accordance with the manner of service of a summons  
30 under Article 3 (commencing with Section 415.10) of, and Article  
31 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of  
32 Part 2 of the Code of Civil Procedure. The complaint shall inform  
33 the party served that the party may request a hearing not later than  
34 20 days from the date the party was served and that the board may  
35 adopt an order setting administrative civil liability based on the

1 allegations set forth in the complaint without a hearing if the party  
2 does not sign a written request for a hearing that is delivered to,  
3 or received by mail by, the board within 20 days after the date the  
4 party was served. The hearing shall be before the board or a  
5 member of the board, in accordance with Section 183.

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

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

12 SEC. 3. Section 1055.2 of the Water Code is amended to read:

13 1055.2. A person or entity shall not be subject to both civil  
14 liability imposed under Section 1055 and civil liability imposed  
15 by the superior court under Section 1052, Section 1119, or Article  
16 4 (commencing with Section 1845) of Chapter 12 of Part 2 for the  
17 same act or failure to act.

18 SEC. 4. Section 1055.5 is added to the Water Code, to read:

19 1055.5. (a) (1) The board shall adjust on an annual basis, by  
20 January 1 of each year beginning in 2025, all civil and  
21 administrative liabilities or penalties imposed by the board in an  
22 action brought at the request of the board pursuant to this division,  
23 to adjust the maximum amounts specified in this division for  
24 inflation, as established by the amount by which the California  
25 Consumer Price Index for the month of June of the year prior to  
26 the adjustment exceeds the California Consumer Price Index for  
27 June of the calendar year in which legislation was last enacted  
28 establishing or amending the maximum amount of the liability or  
29 penalty.

30 (2) The amount of any liability or penalty determined pursuant  
31 to this subdivision shall be rounded as follows:

32 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
33 liability or penalty that is less than or equal to one hundred dollars  
34 (\$100).

35 (B) To the nearest multiple of one hundred dollars (\$100) in the  
36 case of a liability or penalty that is greater than one hundred dollars  
37 (\$100), but less than or equal to one thousand dollars (\$1,000).

38 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
39 the case of a liability or penalty that is greater than one thousand

1 dollars (\$1,000), but less than or equal to ten thousand dollars  
2 (\$10,000).

3 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
4 the case of a liability or penalty that is greater than ten thousand  
5 dollars (\$10,000).

6 (3) Inflation adjustments made pursuant to this subdivision are  
7 exempt from the requirements of Chapter 3.5 (commencing with  
8 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
9 Code. The updated civil and administrative liability or penalties  
10 pursuant to the inflation adjustment shall be filed with the Secretary  
11 of State and published in the California Code of Regulations.

12 (b) This section does not apply to any liability imposed under  
13 Section 1538.

14 (c) The board shall report to the Legislature, in accordance with  
15 Section 9795 of the Government Code, with regard to the  
16 implementation of this section.

17 SEC. 5. Chapter 3.6 (commencing with Section 1115) is added  
18 to Part 1 of Division 2 of the Water Code, to read:

19

20 CHAPTER 3.6. INTERIM RELIEF

21

22 1115. (a) The board may issue an interim relief order to a  
23 diverter or user of water in adjudicative proceedings to apply or  
24 enforce any of the following with respect to water held under any  
25 basis of right:

26 (1) Section 2 of Article X of the California Constitution.

27 ~~(2) The public trust doctrine.~~

28 ~~(3)~~

29 (2) Water quality objectives or principles and guidelines adopted  
30 under subdivision (b) of Section 13142, Section 13149, Section  
31 13170, or *Section* 13241.

32 ~~(4)~~

33 (3) The requirements set forth in permits, licenses, certificates,  
34 and registrations issued under Part 2 (commencing with Section  
35 1200), including actions that invoke the board's reserved  
36 jurisdiction or continuing authority.

37 ~~(5)~~

38 (4) Any provision in Division 1 (commencing with Section  
39 100), this division, or Article 7 (commencing with Section 13550)  
40 of Chapter 7 of Division 7.

1 ~~(6) Section 5937 of the Fish and Game Code.~~

2 (b) The board may commence an interim relief proceeding on  
3 its own motion or upon the petition of an interested party. The  
4 board shall not accept a petition that does not include all of the  
5 following information:

6 (1) The name and mailing address of the petitioner.

7 (2) A description of the specific diversion or use of water that  
8 the petitioner is contesting.

9 (3) A statement of the petitioner's interest in the contested  
10 diversion or use of water.

11 (4) Identification of the adjudicative proceedings in which  
12 interim relief is requested.

13 (5) A description of the harm or injury complained of.

14 (6) An explanation of the nexus between the diversion or use  
15 and the alleged harm or injury.

16 (7) The relief the petitioner is requesting.

17 (8) A statement of reasons explaining why the relief is justified.

18 (9) Any additional information that the board may deem  
19 appropriate.

20 (c) The board may dismiss a petition that does not raise  
21 substantial issues that are appropriate for review.

22 (d) Except as provided in subdivision (e), the board shall provide  
23 notice at least 10 days before the hearing date.

24 (e) The board may issue an interim order prior to the opportunity  
25 for a hearing so long as the order includes a finding by the board  
26 that immediate compliance is necessary to prevent imminent or  
27 irreparable injury to other legal users of water, or to instream  
28 beneficial uses.

29 (f) If the board issues an interim relief order prior to the  
30 opportunity for a hearing, it shall, at the request of the party to  
31 whom the order is issued, hold a hearing within 15 days of the date  
32 the board receives the request for a hearing, unless the party to  
33 whom the interim relief order is issued agrees to an extension of  
34 that period.

35 (g) On or before December 31, 2024, the board shall adopt  
36 regulations providing for a formal process for which any hearing  
37 pursuant to this section is to be governed. The regulations may  
38 include any of the following:

1 (1) Whether to provide that the evidence to be considered shall  
2 be based on declarations under penalty of perjury, the testimony  
3 of witnesses at the hearing, or both.

4 (2) Whether to consider oral or written legal argument that is  
5 provided in a timely manner by the parties.

6 (3) A schedule by which the board will accept filed declarations,  
7 exhibits, and written arguments prior to a hearing pursuant to this  
8 section.

9 (4) Any other evidentiary or procedural rules the board deems  
10 necessary and appropriate to carry out this section.

11 (h) If the board issues an interim relief order pursuant to  
12 subdivision (e), the interim relief order shall remain in effect for  
13 a period not to exceed 180 days unless the party to whom the  
14 interim relief order is issued agrees to an extension of that period.  
15 This subdivision is not a limitation on the authority of the board  
16 to issue any additional interim relief in response to changed  
17 circumstances.

18 (i) In determining whether to provide interim relief, and the  
19 nature and extent of the relief, the board shall consider all relevant  
20 circumstances, including available information concerning the  
21 effects on other legal users of water, fish, wildlife, and other  
22 instream beneficial uses, the extent of harm, the necessity for relief,  
23 and any appropriate measures to minimize any adverse effects of  
24 providing interim relief. Sufficient grounds shall exist for interim  
25 relief upon the same showing as would be required for a superior  
26 court to grant a preliminary injunction.

27 (j) Any party aggrieved by an interim relief order may, not later  
28 than 15 days after the hearing provided for in subdivision (f), file  
29 a petition for a writ of mandate for review of the decision or order.  
30 Reconsideration before the board shall not be an administrative  
31 remedy that is required to be exhausted before filing a petition for  
32 writ of mandate.

33 (k) Section 1094.5 of the Code of Civil Procedure shall govern  
34 judicial proceedings pursuant to subdivision (j).

35 1115.5. (a) As part of the interim relief order, the board may  
36 require a water diverter or user to do any of the following:

37 (1) Cease all harmful practices.

38 (2) Employ specific procedures and operations to prevent or  
39 mitigate the harm.

1 (3) Complete technical and monitoring work and prepare and  
2 submit reports on that work, including draft environmental  
3 documentation.

4 (4) Participate in, and provide funding for, studies that the board  
5 determines are reasonably necessary to evaluate the impact of the  
6 diversion or use that is the subject of the adjudicative proceeding.

7 (5) Reimburse the board's expenses for the preparation of any  
8 necessary environmental documentation.

9 ~~(6) Take other required action.~~

10 (b) The board shall set a schedule for compliance with any  
11 interim relief order.

12 1116. If the board orders interim relief, the board shall set a  
13 schedule, as soon as reasonably possible, for the board's  
14 consideration of permanent relief. The schedule shall include  
15 actions that the water diverter or user is required to undertake to  
16 ensure timely consideration of the permanent relief. The actions  
17 required of the water diverter or user may include, but are not  
18 limited to, the completion of technical and monitoring work, the  
19 preparation and submittal of reports on that work, including draft  
20 environmental documentation, and the reimbursement of the  
21 board's expenses. Any permanent relief shall be granted after  
22 notice and an opportunity for a hearing.

23 1116.5. Notwithstanding Section 15300.2 of Title 14 of the  
24 California Code of Regulations, actions of the board under this  
25 chapter shall be deemed to be within the meaning of Section 15308  
26 of Title 14 of the California Code of Regulations.

27 1117. The board may review and revise any part of an interim  
28 relief order at any time after notice to all interested parties and an  
29 opportunity for a hearing. If a hearing is requested, the board shall  
30 establish the hearing date within 15 calendar days and shall not  
31 review or revise the interim relief order until the hearing occurs.

32 1117.5. The issuance or denial of an interim relief order by the  
33 board does not alter the burdens of proof or the burdens of coming  
34 forward with respect to the board's final decision on the merits in  
35 the adjudicative proceeding in which interim relief is requested.

36 1118. This chapter is not a limitation on the jurisdiction of any  
37 court or agency over any matter within that court or agency's  
38 jurisdiction.

39 1118.5. If a water diverter or user does not comply with an  
40 interim relief order, the Attorney General, upon the request of the

1 board, shall petition the superior court for prohibitory or mandatory  
2 injunctive relief, as necessary, through the issuance of a temporary  
3 restraining order, preliminary injunction, or permanent injunction.

4 1119. (a) (1) Any person or entity that violates an interim  
5 relief order issued by the board is liable for a civil penalty not to  
6 exceed the sum of the following:

7 (A) Ten thousand dollars (\$10,000) for each day in which a  
8 violation occurs.

9 (B) Two thousand five hundred dollars (\$2,500) for each  
10 acre-foot of water diverted in violation of the interim relief order.

11 (2) Civil liability may be imposed by the superior court. The  
12 Attorney General, upon request of the board, shall petition the  
13 superior court to impose the liability. The Superior Court shall  
14 impose the civil penalty if it determines by a preponderance of the  
15 evidence that the water diverter or user subject to the interim relief  
16 order has violated the order.

17 (3) Civil liability may be imposed administratively by the board  
18 pursuant to Section 1055.

19 (b) In determining the appropriate amount, the court or board,  
20 as the case may be, shall consider all the relevant circumstances,  
21 including the extent of harm caused by the violation, the nature  
22 and persistence of the violation, the length of time over which the  
23 violation occurs, and any corrective action undertaken by the  
24 violator.

25 (c) All funds recovered pursuant to this section shall be  
26 deposited in the Water Rights Fund.

27 (d) Remedies under this section are in addition to, and do not  
28 supersede or limit, any and all other remedies, civil or criminal.

29 1119.5. This chapter does not limit any authority held by the  
30 board under this code or any other provision of law.

31 1119.6. This chapter shall become operative on January 1,  
32 2025.

33 SEC. 6. Section 1126 of the Water Code is amended to read:

34 1126. (a) It is the intent of the Legislature that all issues  
35 relating to state water law decided by the board be reviewed in  
36 state courts, if a party seeks judicial review. It is the intent of the  
37 Legislature that judicial review of a final decision or order of the  
38 board shall be in accordance with this section. It is further the  
39 intent of the Legislature that the courts assert jurisdiction and  
40 exercise discretion to fashion appropriate remedies pursuant to

1 Section 389 of the Code of Civil Procedure to facilitate the  
2 resolution of state water rights issues in state courts.

3 (b) Any party aggrieved by any decision or order may, not later  
4 than 30 days from the date of final action by the board, file a  
5 petition for a writ of mandate for review of the decision or order.  
6 An aggrieved party shall file a petition for reconsideration with  
7 the board to exhaust that party's administrative remedies before  
8 filing an action under this section, or under Section 21167 of the  
9 Public Resources Code if the board is a respondent in connection  
10 with its issuance of an order or decision subject to this chapter,  
11 only if the initial decision or order is issued under authority  
12 delegated to an officer or employee of the board. The time for  
13 filing the petition for writ of mandate and the time for filing an  
14 action or proceeding in which the board is a respondent under  
15 Section 21167 of the Public Resources Code shall be extended for  
16 any person who seeks reconsideration by the board pursuant to  
17 this article.

18 (c) Section 1094.5 of the Code of Civil Procedure shall govern  
19 judicial proceedings under this section. The scope of review of a  
20 decision or order issued under Chapter 3.6 (commencing with  
21 Section 1115) shall be the same as for a court of appeal review of  
22 a superior court decision granting or denying a preliminary  
23 injunction.

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

27 (e) In any court case reviewing a decision or order by the board  
28 relating to a permit or license to appropriate water held by the state  
29 through the department or any other state agency, or to a permit  
30 or license to appropriate water held by the United States through  
31 the Bureau of Reclamation or any other federal agency, the election  
32 by the United States, or any agency thereof, not to be a party shall  
33 not, in and of itself, be the basis for dismissal pursuant to Section  
34 389 of the Code of Civil Procedure or any other provision of law.

35 (f) Except as provided in this section, a legal or equitable process  
36 shall not issue in a proceeding in a court against the board or an  
37 officer of the board to review, prevent, or enjoin either of the  
38 following:

39 (1) An adjudicative proceeding under this division.

1 (2) A decision or order of the board before a final decision or  
2 order is issued.

3 SEC. 7. Section 1846 of the Water Code is amended to read:

4 1846. (a) (1) A person or entity may be liable for a violation  
5 of paragraph (2) in an amount not to exceed the sum of the  
6 following:

7 (A) One thousand five hundred dollars (\$1,500) for each day  
8 in which the violation occurs.

9 (B) Ten thousand dollars (\$10,000) for each day in which the  
10 violation occurs.

11 (C) Two thousand five hundred dollars (\$2,500) for each  
12 acre-foot of water diverted or used that amounted to the violation.

13 (2) (A) A term or condition of a permit, license, certificate, or  
14 registration issued under this division.

15 (B) A regulation or order adopted by the board.

16 (b) Civil liability may be imposed pursuant to subparagraph (B)  
17 or (C) of paragraph (1) of subdivision (a) by the superior court.  
18 The Attorney General, upon the request of the board, shall petition  
19 the superior court to impose, assess, and recover those sums.

20 (c) Civil liability may be imposed pursuant to subparagraph (A)  
21 of paragraph (1) of subdivision (a) administratively by the board  
22 pursuant to Section 1055.

23 SEC. 8. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY APRIL 25, 2023

AMENDED IN ASSEMBLY MARCH 9, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 754**

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**Introduced by Assembly Member Papan**

February 13, 2023

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An act to amend Sections ~~10620~~, 10631, ~~and 10826~~ 10632, and 10826.2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 754, as amended, Papan. Water management planning: ~~automatic conservation plan.~~ *water shortages.*

(1) Existing law, the Urban Water Management Planning Act, requires every public and private urban water supplier that directly or indirectly provides water for municipal purposes to prepare and adopt an urban water management plan. Existing law requires an urban water management plan to quantify past, current, and projected water use, identifying the uses among water use sectors, including, among others, commercial, agricultural, and industrial. Existing law requires an urban water management plan to identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over a specified period of time, providing supporting and related information, including, among other things, a description of the management of each supply in correlation with the other identified supplies when multiple sources of water supply are identified. *Existing law requires an urban water management plan to include a narrative*

*relating to water demand management measures implemented over the prior 5 years.*

~~This bill would require an urban water management plan, if a reservoir is identified as an existing or planned source of water available to the supplier, to include specified information related to water storage and conservation, including, among other things, a target water supply storage curve, calculated based on target carryover levels of water sufficient to satisfy water users and streamflow requirements, as specified, and an automatic conservation plan that would be implemented when the reservoir storage level falls below the target water supply storage curve. The bill would require the automatic conservation plan to contain specified information related to water storage, including, among other things, reservoir storage levels relative to a target water supply storage curve that will trigger shortage response actions.~~

*This bill would require an urban water management plan to include in that narrative any demand management measures that have a significant impact on water used by downstream water rights holders.*

*(2) Existing law requires every urban water supplier to prepare and adopt a water shortage contingency plan as part of its urban water management plan. Existing law requires the water shortage contingency plan to include procedures for an annual water supply and demand assessment, including the data inputs and assessment methodology used to evaluate the urban water supplier's water supply reliability for the current year and one dry year.*

*This bill would require a water shortage contingency plan to include a target water supply storage curve for a reservoir, if that reservoir constitutes at least 50% of the total water supply for the urban water supplier, based on target carryover levels sufficient to satisfy water users, ecological streamflow needs, and water quality needs, as specified. The bill would require a water shortage contingency plan to include reservoir shortage levels relative to the target water supply storage curve that will trigger specified shortage response actions.*

~~(2)~~

*(3) Existing law requires an agricultural water supplier to prepare and adopt an agricultural water management plan with specified components on or before December 31, 2012, and to update those plans on or before December 31, 2015, and on or before April 1, 2021, and thereafter on or before April 1 in the years ending in 6 and one. Existing law requires an agricultural water supplier to submit its plan to the*

Department of Water Resources no later than 30 days after the adoption of the plan and requires the department to review an agricultural water management plan and notify an agricultural water supplier if the department determines that it is noncompliant, as provided. Existing law requires an agricultural water supplier to submit copies of its plan to specified entities no later than 30 days after the department’s review of the plan and requires the department to submit its report summarizing the status of the plans to the Legislature on or before April 30 in the years ending in 7 and 2. *Existing law requires an agricultural water supplier to include a drought plan as part of its agricultural water management plan. Existing law requires the drought plan to describe the agricultural water supplier’s actions relating to drought preparedness and management of water supplies and allocations during drought conditions, as provided.*

~~This bill would additionally require an agricultural water management plan, if a reservoir is identified as an existing or planned source of water available to the supplier, to include specified information related to water storage and conservation, including, among other things, a target water supply storage curve, calculated as provided, and an automatic conservation plan that is implemented when the reservoir storage level falls below the target water supply storage curve. The bill would require the automatic conservation plan to contain specified information regarding, among other things, response actions to be taken when water storage falls to specified storage levels.~~

*This bill would require a drought plan to include a target water supply storage curve for a reservoir, if that reservoir constitutes at least 50% of the total water supply for the agricultural water supplier, based on target carryover levels sufficient to satisfy water users, ecological streamflow needs, and water quality needs, as specified. The bill would require the drought plan to include reservoir shortage levels relative to the target water supply storage curve that will trigger specified shortage response actions.*

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

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

1 SECTION 1. ~~Section 10620 of the Water Code is amended to~~  
2 read:

1     ~~10620. (a) Every urban water supplier shall prepare and adopt~~  
2 ~~an urban water management plan in the manner set forth in Article~~  
3 ~~3 (commencing with Section 10640).~~

4     ~~(b) Every person that becomes an urban water supplier shall~~  
5 ~~adopt an urban water management plan within one year after it~~  
6 ~~has become an urban water supplier.~~

7     ~~(c) An urban water supplier indirectly providing water shall not~~  
8 ~~include planning elements in its water management plan as~~  
9 ~~provided in Article 2 (commencing with Section 10630) that would~~  
10 ~~be applicable to urban water suppliers or public agencies directly~~  
11 ~~providing water, or to their customers, without the consent of those~~  
12 ~~suppliers or public agencies.~~

13     ~~(d) (1) An urban water supplier may satisfy the requirements~~  
14 ~~of this part by participation in areawide, regional, watershed, or~~  
15 ~~basinwide urban water management planning where those plans~~  
16 ~~will reduce preparation costs and contribute to the achievement of~~  
17 ~~conservation, efficient water use, and improved local drought~~  
18 ~~resilienece.~~

19     ~~(2) Notwithstanding paragraph (1), each urban water supplier~~  
20 ~~shall develop its own water shortage contingency plan and~~  
21 ~~automatic conservation plan, but an urban water supplier may~~  
22 ~~incorporate, collaborate, and otherwise share information with~~  
23 ~~other urban water suppliers or other governing entities participating~~  
24 ~~in an areawide, regional, watershed, or basinwide urban water~~  
25 ~~management plan, an agricultural management plan, or~~  
26 ~~groundwater sustainability plan development.~~

27     ~~(3) Each urban water supplier shall coordinate the preparation~~  
28 ~~of its plan with other appropriate agencies in the area, including~~  
29 ~~other water suppliers that share a common source, water~~  
30 ~~management agencies, and relevant public agencies, to the extent~~  
31 ~~practicable.~~

32     ~~(e) The urban water supplier may prepare the plan with its own~~  
33 ~~staff, by contract, or in cooperation with other governmental~~  
34 ~~agencies.~~

35     ~~(f) An urban water supplier shall describe in the plan water~~  
36 ~~management tools and options used by that entity that will~~  
37 ~~maximize resources and minimize the need to import water from~~  
38 ~~other regions.~~

1     ~~SEC. 2.~~

2     ~~SECTION 1.~~ Section 10631 of the Water Code is amended to  
3 read:

4     10631. A plan shall be adopted in accordance with this chapter  
5 that shall do all of the following:

6     (a) Describe the service area of the supplier, including current  
7 and projected population, climate, and other social, economic, and  
8 demographic factors affecting the supplier's water management  
9 planning. The projected population estimates shall be based upon  
10 data from the state, regional, or local service agency population  
11 projections within the service area of the urban water supplier and  
12 shall be in 5-year increments to 20 years or as far as data is  
13 available. The description shall include the current and projected  
14 land uses within the existing or anticipated service area affecting  
15 the supplier's water management planning. Urban water suppliers  
16 shall coordinate with local or regional land use authorities to  
17 determine the most appropriate land use information, including,  
18 where appropriate, land use information obtained from local or  
19 regional land use authorities, as developed pursuant to Article 5  
20 (commencing with Section 65300) of Chapter 3 of Division 1 of  
21 Title 7 of the Government Code.

22     (b) Identify and quantify, to the extent practicable, the existing  
23 and planned sources of water available to the supplier over the  
24 same five-year increments described in subdivision (a), providing  
25 supporting and related information, including all of the following:

26     (1) A detailed discussion of anticipated supply availability under  
27 a normal water year, single dry year, and droughts lasting at least  
28 five years, as well as more frequent and severe periods of drought,  
29 as described in the drought risk assessment. For each source of  
30 water supply, consider any information pertinent to the reliability  
31 analysis conducted pursuant to Section 10635, including changes  
32 in supply due to climate change.

33     (2) When multiple sources of water supply are identified, a  
34 description of the management of each supply in correlation with  
35 the other identified supplies.

36     (3) For any planned sources of water supply, a description of  
37 the measures that are being undertaken to acquire and develop  
38 those water supplies.

39     (4) If groundwater is identified as an existing or planned source  
40 of water available to the supplier, all of the following information:

1 (A) The current version of any groundwater sustainability plan  
2 or alternative adopted pursuant to Part 2.74 (commencing with  
3 Section 10720), any groundwater management plan adopted by  
4 the urban water supplier, including plans adopted pursuant to Part  
5 2.75 (commencing with Section 10750), or any other specific  
6 authorization for groundwater management for basins underlying  
7 the urban water supplier's service area.

8 (B) A description of any groundwater basin or basins from  
9 which the urban water supplier pumps groundwater. For basins  
10 that a court or the board has adjudicated the rights to pump  
11 groundwater, a copy of the order or decree adopted by the court  
12 or the board and a description of the amount of groundwater the  
13 urban water supplier has the legal right to pump under the order  
14 or decree. For a basin that has not been adjudicated, information  
15 as to whether the department has identified the basin as a high- or  
16 medium-priority basin in the most current official departmental  
17 bulletin that characterizes the condition of the groundwater basin,  
18 and a detailed description of the efforts being undertaken by the  
19 urban water supplier to coordinate with groundwater sustainability  
20 agencies or groundwater management agencies listed in subdivision  
21 (c) of Section 10723 to maintain or achieve sustainable  
22 groundwater conditions in accordance with a groundwater  
23 sustainability plan or alternative adopted pursuant to Part 2.74  
24 (commencing with Section 10720).

25 (C) A detailed description and analysis of the location, amount,  
26 and sufficiency of groundwater pumped by the urban water supplier  
27 for the past five years. The description and analysis shall be based  
28 on information that is reasonably available, including, but not  
29 limited to, historic use records.

30 (D) A detailed description and analysis of the amount and  
31 location of groundwater that is projected to be pumped by the  
32 urban water supplier. The description and analysis shall be based  
33 on information that is reasonably available, including, but not  
34 limited to, historic use records.

35 ~~(5) If a reservoir is identified as an existing or planned source~~  
36 ~~of water available to the supplier, all the following information:~~

37 ~~(A) (i) A target water supply storage curve based on target~~  
38 ~~carryover levels sufficient to satisfy water users and streamflow~~  
39 ~~requirements for at least five years, with reasonably predicted~~

1 ~~inflow calculations considering local conditions and climate~~  
2 ~~change.~~

3 ~~(ii) The reservoir storage level shall be calculated each month~~  
4 ~~based on reservoir capacity, projected inflows, evaporation, water~~  
5 ~~demands from all users, and streamflow requirements. The~~  
6 ~~reservoir storage level shall be plotted against the target water~~  
7 ~~supply storage curve on a calendar to ensure that target storage~~  
8 ~~levels are met.~~

9 ~~(B) An automatic conservation plan that is implemented when~~  
10 ~~the reservoir storage level falls below the target water supply~~  
11 ~~storage curve determined in subparagraph (A). When both an~~  
12 ~~automatic conservation plan and a water shortage contingency~~  
13 ~~plan pursuant to Section 10632 are in effect, the more restrictive~~  
14 ~~of the two plans shall govern. An automatic conservation plan~~  
15 ~~shall include all of the following:~~

16 ~~(i) Six standard water shortage levels corresponding to~~  
17 ~~progressive ranges of up to 10-, 20-, 30-, 40-, and 50-percent~~  
18 ~~shortages below the target water supply curve and greater than~~  
19 ~~50-percent shortage.~~

20 ~~(ii) At each water shortage level, urban water suppliers shall~~  
21 ~~initiate conservation response actions that align with the defined~~  
22 ~~shortage levels and include, at a minimum, all of the following:~~

23 ~~(I) Locally appropriate water supply augmentation actions.~~

24 ~~(II) Locally appropriate water demand reduction actions to~~  
25 ~~adequately respond to shortages.~~

26 ~~(III) Locally appropriate operational changes.~~

27 ~~(IV) Mandatory prohibitions against specific water use practices~~  
28 ~~that are in addition to state-mandated prohibitions and appropriate~~  
29 ~~to the local conditions.~~

30 ~~(iii) For each action, an estimate of the extent that the gap~~  
31 ~~between target reservoir storage level and the actual reservoir~~  
32 ~~storage level will be reduced by implementation of the action.~~

33 ~~(iv) For each action, an estimate of impacts to other water~~  
34 ~~resources, including any increase in groundwater extraction.~~

35 ~~(v) Water demand reduction actions shall be applied to all~~  
36 ~~customer classes, and may include any of the following:~~

37 ~~(I) Water waste prevention ordinances.~~

38 ~~(II) Metering.~~

39 ~~(III) Conservation pricing.~~

40 ~~(IV) Public education and outreach.~~

- 1 ~~(V) Programs to assess and manage distribution system real~~  
2 ~~loss.~~
- 3 ~~(VI) Water conservation program coordination and staffing~~  
4 ~~support.~~
- 5 ~~(vi) Other demand management measures that have a significant~~  
6 ~~impact on water use as measured in gallons per capita per day,~~  
7 ~~including innovative measures, if implemented.~~
- 8 ~~(vii) Other demand management measures that have a significant~~  
9 ~~impact on water used by downstream water rights holders.~~
- 10 (c) Describe the opportunities for exchanges or transfers of  
11 water on a short-term or long-term basis.
- 12 (d) (1) For an urban retail water supplier, quantify, to the extent  
13 records are available, past and current water use, over the same  
14 five-year increments described in subdivision (a), and projected  
15 water use, based upon information developed pursuant to  
16 subdivision (a), identifying the uses among water use sectors,  
17 including, but not necessarily limited to, all of the following:
- 18 (A) Single-family residential.  
19 (B) Multifamily.  
20 (C) Commercial.  
21 (D) Industrial.  
22 (E) Institutional and governmental.  
23 (F) Landscape.  
24 (G) Sales to other agencies.  
25 (H) Saline water intrusion barriers, groundwater recharge, or  
26 conjunctive use, or any combination thereof.  
27 (I) Agricultural.  
28 (J) Distribution system water loss.
- 29 (2) The water use projections shall be in the same five-year  
30 increments described in subdivision (a).
- 31 (3) (A) The distribution system water loss shall be quantified  
32 for each of the five years preceding the plan update, in accordance  
33 with rules adopted pursuant to Section 10608.34.
- 34 (B) The distribution system water loss quantification shall be  
35 reported in accordance with a worksheet approved or developed  
36 by the department through a public process. The water loss  
37 quantification worksheet shall be based on the water system  
38 balance methodology developed by the American Water Works  
39 Association.

1 (C) In the plan due July 1, 2021, and in each update thereafter,  
2 data shall be included to show whether the urban retail water  
3 supplier met the distribution loss standards enacted by the board  
4 pursuant to Section 10608.34.

5 (4) (A) Water use projections, where available, shall display  
6 and account for the water savings estimated to result from adopted  
7 codes, standards, ordinances, or transportation and land use plans  
8 identified by the urban water supplier, as applicable to the service  
9 area.

10 (B) To the extent that an urban water supplier reports the  
11 information described in subparagraph (A), an urban water supplier  
12 shall do both of the following:

13 (i) Provide citations of the various codes, standards, ordinances,  
14 or transportation and land use plans utilized in making the  
15 projections.

16 (ii) Indicate the extent that the water use projections consider  
17 savings from codes, standards, ordinances, or transportation and  
18 land use plans. Water use projections that do not account for these  
19 water savings shall be noted of that fact.

20 (e) Provide a description of the supplier's water demand  
21 management measures. This description shall include all of the  
22 following:

23 (1) (A) For an urban retail water supplier, as defined in Section  
24 10608.12, a narrative description that addresses the nature and  
25 extent of each water demand management measure implemented  
26 over the past five years. The narrative shall describe the water  
27 demand management measures that the supplier plans to implement  
28 to achieve its water use targets pursuant to Section 10608.20.

29 (B) The narrative pursuant to this paragraph shall include  
30 descriptions of the following water demand management measures:

31 (i) Water waste prevention ordinances.

32 (ii) Metering.

33 (iii) Conservation pricing.

34 (iv) Public education and outreach.

35 (v) Programs to assess and manage distribution system real loss.

36 (vi) Water conservation program coordination and staffing  
37 support.

38 (vii) Other demand management measures that have a significant  
39 impact on water use as measured in gallons per capita per day,  
40 including innovative measures, if implemented.

1 (viii) *Other demand management measures that have a*  
 2 *significant impact on water used by downstream water rights*  
 3 *holders.*

4 (2) For an urban wholesale water supplier, as defined in Section  
 5 10608.12, a narrative description of the items in clauses (ii), (iv),  
 6 (vi), ~~and (vii)~~ (vii), and (viii) of subparagraph (B) of paragraph  
 7 (1), and a narrative description of its distribution system asset  
 8 management and wholesale supplier assistance programs.

9 (f) Include a description of all water supply projects and water  
 10 supply programs that may be undertaken by the urban water  
 11 supplier to meet the total projected water use, as established  
 12 pursuant to subdivision (a) of Section 10635. The urban water  
 13 supplier shall include a detailed description of expected future  
 14 projects and programs that the urban water supplier may implement  
 15 to increase the amount of the water supply available to the urban  
 16 water supplier in normal and single-dry water years and for a period  
 17 of drought lasting five consecutive water years. The description  
 18 shall identify specific projects and include a description of the  
 19 increase in water supply that is expected to be available from each  
 20 project. The description shall include an estimate with regard to  
 21 the implementation timeline for each project or program.

22 (g) Describe the opportunities for development of desalinated  
 23 water, including, but not limited to, ocean water, brackish water,  
 24 and groundwater, as a long-term supply.

25 (h) An urban water supplier that relies upon a wholesale agency  
 26 for a source of water shall provide the wholesale agency with water  
 27 use projections from that agency for that source of water in 5-year  
 28 increments to 20 years or as far as data is available. The wholesale  
 29 agency shall provide information to the urban water supplier for  
 30 inclusion in the urban water supplier’s plan that identifies and  
 31 quantifies, to the extent practicable, the existing and planned  
 32 sources of water as required by subdivision (b), available from the  
 33 wholesale agency to the urban water supplier over the same  
 34 five-year increments, and during various water-year types in  
 35 accordance with subdivision (f). An urban water supplier may rely  
 36 upon water supply information provided by the wholesale agency  
 37 in fulfilling the plan informational requirements of subdivisions  
 38 (b) and (f).

39 ~~SEC. 3. Section 10826 of the Water Code is amended to read:~~

1     ~~10826. An agricultural water management plan shall be adopted~~  
2 ~~in accordance with this chapter. The plan shall do all of the~~  
3 ~~following:~~  
4     ~~(a) Describe the agricultural water supplier and the service area,~~  
5 ~~including all of the following:~~  
6       ~~(1) Size of the service area.~~  
7       ~~(2) Location of the service area and its water management~~  
8 ~~facilities:~~  
9       ~~(3) Terrain and soils.~~  
10       ~~(4) Climate.~~  
11       ~~(5) Operating rules and regulations.~~  
12       ~~(6) Water delivery measurements or calculations.~~  
13       ~~(7) Water rate schedules and billing.~~  
14       ~~(8) Water shortage allocation policies.~~  
15     ~~(b) Describe the quantity and quality of water resources of the~~  
16 ~~agricultural water supplier, including all of the following:~~  
17       ~~(1) Surface water supply.~~  
18       ~~(2) Groundwater supply.~~  
19       ~~(3) Other water supplies, including recycled water.~~  
20       ~~(4) Source water quality monitoring practices.~~  
21       ~~(5) Water uses within the agricultural water supplier's service~~  
22 ~~area, including all of the following:~~  
23       ~~(A) Agricultural.~~  
24       ~~(B) Environmental.~~  
25       ~~(C) Recreational.~~  
26       ~~(D) Municipal and industrial.~~  
27       ~~(E) Groundwater recharge, including estimated flows from deep~~  
28 ~~percolation from irrigation and seepage.~~  
29     ~~(c) Include an annual water budget based on the quantification~~  
30 ~~of all inflow and outflow components for the service area of the~~  
31 ~~agricultural water supplier. Components of inflow shall include~~  
32 ~~surface inflow, groundwater pumping in the service area, and~~  
33 ~~effective precipitation. Components of outflow shall include surface~~  
34 ~~outflow, deep percolation, and evapotranspiration. An agricultural~~  
35 ~~water supplier shall report the annual water budget on a water-year~~  
36 ~~basis. The department shall provide tools and resources to assist~~  
37 ~~agricultural water suppliers in developing and quantifying~~  
38 ~~components necessary to develop a water budget.~~  
39     ~~(d) Include an analysis, based on available information, of the~~  
40 ~~effect of climate change on future water supplies.~~

1 ~~(e) Describe previous water management activities.~~

2 ~~(f) Identify water management objectives based on the water~~  
3 ~~budget to improve water system efficiency or to meet other water~~  
4 ~~management objectives. The agricultural water supplier shall~~  
5 ~~identify, prioritize, and implement actions to reduce water loss,~~  
6 ~~improve water system management, and meet other water~~  
7 ~~management objectives identified in the plan.~~

8 ~~(g) Include in the plan information regarding efficient water~~  
9 ~~management practices required pursuant to Section 10608.48.~~

10 ~~(h) Quantify the efficiency of agricultural water use within the~~  
11 ~~service area of the agricultural water supplier using the appropriate~~  
12 ~~method or methods from among the four water use efficiency~~  
13 ~~quantification methods developed by the department in the May~~  
14 ~~8, 2012, report to the Legislature entitled “A Proposed~~  
15 ~~Methodology for Quantifying the Efficiency of Agricultural Water~~  
16 ~~Use.” The agricultural water supplier shall account for all water~~  
17 ~~uses, including crop water use, agronomic water use, environmental~~  
18 ~~water use, and recoverable surface flows.~~

19 ~~(i) If a reservoir is identified as an existing or planned source~~  
20 ~~of water available to the supplier, all of the following information~~  
21 ~~shall be contained in the plan:~~

22 ~~(1) (A) A target water supply storage curve based on target~~  
23 ~~carryover levels sufficient to satisfy water users and streamflow~~  
24 ~~requirements for at least five years, with reasonably predicted~~  
25 ~~inflow calculations considering local conditions and climate~~  
26 ~~change.~~

27 ~~(B) The reservoir storage level shall be calculated each month~~  
28 ~~based on reservoir capacity, projected inflows, evaporation, water~~  
29 ~~demands from all users, and streamflow requirements. The~~  
30 ~~reservoir storage level shall be plotted against the target water~~  
31 ~~supply storage curve on a calendar to ensure that target storage~~  
32 ~~levels are being met.~~

33 ~~(2) An automatic conservation plan that is implemented when~~  
34 ~~the reservoir storage level falls below the target water supply~~  
35 ~~storage curve determined in subparagraph (A). When both an~~  
36 ~~automatic conservation plan and a drought plan pursuant to Section~~  
37 ~~10826.2 are in effect, the more restrictive of the two plans shall~~  
38 ~~govern. An automatic conservation plan shall include all of the~~  
39 ~~following:~~

1 ~~(A) Six standard water shortage levels corresponding to~~  
2 ~~progressive ranges of up to 10-, 20-, 30-, 40-, and 50-percent~~  
3 ~~shortages below the target water supply curve and greater than~~  
4 ~~50-percent shortage.~~

5 ~~(B) At each water shortage level, agricultural water suppliers~~  
6 ~~shall initiate conservation response actions that align with the~~  
7 ~~defined shortage levels and include, at a minimum, all of the~~  
8 ~~following:~~

- 9 ~~(i) Locally appropriate supply augmentation actions.~~  
10 ~~(ii) Locally appropriate demand reduction actions to adequately~~  
11 ~~respond to shortages.~~  
12 ~~(iii) Locally appropriate operational changes.~~  
13 ~~(iv) Additional, mandatory prohibitions against specific water~~  
14 ~~use practices that are in addition to state-mandated prohibitions~~  
15 ~~and appropriate to the local conditions.~~

16 ~~(C) For each action, an estimate of the extent that the gap~~  
17 ~~between the target reservoir storage level and the actual reservoir~~  
18 ~~storage level will be reduced by implementation of the action.~~

19 ~~(D) For each action, an estimate of impacts to other water~~  
20 ~~resources, including any increase in groundwater extraction.~~

21 *SEC. 2. Section 10632 of the Water Code is amended to read:*

22 10632. (a) Every urban water supplier shall prepare and adopt  
23 a water shortage contingency plan as part of its urban water  
24 management plan that consists of each of the following elements:

25 (1) The analysis of water supply reliability conducted pursuant  
26 to Section 10635.

27 (2) The procedures used in conducting an annual water supply  
28 and demand assessment that include, at a minimum, both of the  
29 following:

30 (A) The written decisionmaking process that an urban water  
31 supplier will use each year to determine its water supply reliability.

32 (B) The key data inputs and assessment methodology used to  
33 evaluate the urban water supplier's water supply reliability for the  
34 current year and one dry year, including all of the following:

35 (i) Current year unconstrained demand, considering weather,  
36 growth, and other influencing factors, such as policies to manage  
37 current supplies to meet demand objectives in future years, as  
38 applicable.

39 (ii) Current year available supply, considering hydrological and  
40 regulatory conditions in the current year and one dry year. The

1 annual supply and demand assessment may consider more than  
2 one dry year solely at the discretion of the urban water supplier.

3 (iii) Existing infrastructure capabilities and plausible constraints.

4 (iv) A defined set of locally applicable evaluation criteria that  
5 are consistently relied upon for each annual water supply and  
6 demand assessment.

7 (v) (I) A description and quantification of each source of water  
8 supply.

9 (II) *If a single reservoir constitutes at least 50 percent of the*  
10 *total water supply for the urban water supplier, the water shortage*  
11 *contingency plan shall include a target water supply storage curve*  
12 *for that reservoir based on target carryover levels sufficient to*  
13 *satisfy water users and ecological streamflow needs pursuant to*  
14 *any applicable state, federal, or local regulations, and water*  
15 *quality needs pursuant to any state, federal, or local regulations*  
16 *for the current year and one dry year, with reasonably predicted*  
17 *inflow calculations considering local conditions and climate*  
18 *change.*

19 (III) *Each month, the actual reservoir level shall be plotted*  
20 *against the target water supply storage curve on a calendar to*  
21 *determine whether target storage levels are met.*

22 (3) (A) (i) Six standard water shortage levels corresponding  
23 to progressive ranges of up to ~~10, 20, 30, 40, and 50 percent~~  
24 ~~shortages and greater than 50 percent~~ 10-, 20-, 30-, 40-, and  
25 50-percent shortages, and greater than 50-percent shortage. Urban  
26 water suppliers shall define these shortage levels based on the  
27 suppliers' water supply conditions, including percentage reductions  
28 in water supply, changes in groundwater levels, changes in surface  
29 elevation or level of subsidence, or other changes in hydrological  
30 or other local conditions indicative of the water supply available  
31 for use. Shortage levels shall also apply to catastrophic interruption  
32 of water supplies, including, but not limited to, a regional power  
33 outage, an earthquake, and other potential emergency events.

34 ~~(B)~~

35 (ii) An urban water supplier with an existing water shortage  
36 contingency plan that uses different water shortage levels may  
37 comply with the requirement in ~~subparagraph (A)~~ clause (i) by  
38 developing and including a cross-reference relating its existing  
39 categories to the six standard water shortage levels.

1 (B) *If a target water supply storage curve is developed pursuant*  
2 *to clause (v) of subparagraph (B) of paragraph (2), six standard*  
3 *reservoir shortage levels corresponding to water levels below the*  
4 *target water supply storage curve in progressive ranges of up to*  
5 *10-, 20-, 30-, 40-, and 50-percent shortages, and greater than*  
6 *50-percent shortage. Urban water suppliers shall determine these*  
7 *shortage levels pursuant to subclause (III) of clause (v) of*  
8 *subparagraph (B) of paragraph (2). Reservoir shortage levels*  
9 *trigger shortage response actions that align with the defined*  
10 *shortage levels and include, at a minimum, subparagraphs (B),*  
11 *(D), and (E) of paragraph (4).*

12 (4) Shortage response actions that align with the defined  
13 shortage levels and include, at a minimum, all of the following:

14 (A) Locally appropriate supply augmentation actions.

15 (B) Locally appropriate demand reduction actions to adequately  
16 respond to shortages.

17 (C) Locally appropriate operational changes.

18 (D) Additional, mandatory prohibitions against specific water  
19 use practices that are in addition to state-mandated prohibitions  
20 and appropriate to the local conditions.

21 (E) For each action, an estimate of the extent to which the gap  
22 between supplies and demand will be reduced by implementation  
23 of the action.

24 (5) Communication protocols and procedures to inform  
25 customers, the public, interested parties, and local, regional, and  
26 state governments, regarding, at a minimum, all of the following:

27 (A) Any current or predicted shortages as determined by the  
28 annual water supply and demand assessment described pursuant  
29 to Section 10632.1.

30 (B) Any shortage response actions triggered or anticipated to  
31 be triggered by the annual water supply and demand assessment  
32 described pursuant to Section 10632.1.

33 (C) Any other relevant communications.

34 (6) For an urban retail water supplier, customer compliance,  
35 enforcement, appeal, and exemption procedures for triggered  
36 shortage response actions as determined pursuant to Section  
37 10632.2.

38 (7) (A) A description of the legal authorities that empower the  
39 urban water supplier to implement and enforce its shortage  
40 response actions specified in paragraph (4) that may include, but

1 are not limited to, statutory authorities, ordinances, resolutions,  
2 and contract provisions.

3 (B) A statement that an urban water supplier shall declare a  
4 water shortage emergency in accordance with Chapter 3  
5 (commencing with Section 350) of Division 1.

6 (C) A statement that an urban water supplier shall coordinate  
7 with any city or county within which it provides water supply  
8 services for the possible proclamation of a local emergency, as  
9 defined in Section 8558 of the Government Code.

10 (8) A description of the financial consequences of, and responses  
11 for, drought conditions, including, but not limited to, all of the  
12 following:

13 (A) A description of potential revenue reductions and expense  
14 increases associated with activated shortage response actions  
15 described in paragraph (4).

16 (B) A description of mitigation actions needed to address  
17 revenue reductions and expense increases associated with activated  
18 shortage response actions described in paragraph (4).

19 (C) A description of the cost of compliance with Chapter 3.3  
20 (commencing with Section 365) of Division 1.

21 (9) For an urban retail water supplier, monitoring and reporting  
22 requirements and procedures that ensure appropriate data is  
23 collected, tracked, and analyzed for purposes of monitoring  
24 customer compliance and to meet state reporting requirements.

25 (10) Reevaluation and improvement procedures for  
26 systematically monitoring and evaluating the functionality of the  
27 water shortage contingency plan in order to ensure shortage risk  
28 tolerance is adequate and appropriate water shortage mitigation  
29 strategies are implemented as needed.

30 (b) For purposes of developing the water shortage contingency  
31 plan pursuant to subdivision (a), an urban water supplier shall  
32 analyze and define water features that are artificially supplied with  
33 water, including ponds, lakes, waterfalls, and fountains, separately  
34 from swimming pools and spas, as defined in subdivision (a) of  
35 Section 115921 of the Health and Safety Code.

36 (c) The urban water supplier shall make available the water  
37 shortage contingency plan prepared pursuant to this article to its  
38 customers and any city or county within which it provides water  
39 supplies no later than 30 days after adoption of the water shortage  
40 contingency plan.

1     *SEC. 3. Section 10826.2 of the Water Code is amended to read:*

2     10826.2. As part of its agricultural water management plan,  
3 each agricultural water supplier shall develop a drought plan for  
4 periods of limited water supply describing the actions of the  
5 agricultural water supplier for drought preparedness and  
6 management of water supplies and allocations during drought  
7 conditions. The drought plan shall contain both of the following:

8     (a) Resilience planning, including all of the following:

9     (1) Data, indicators, and information needed to determine the  
10 water supply availability and levels of drought severity.

11     (2) Analyses and identification of potential vulnerability to  
12 drought.

13     (3) A description of the opportunities and constraints for  
14 improving drought resilience planning, including all of the  
15 following:

16     (A) The availability of new technology or information.

17     (B) The ability of the agricultural water supplier to obtain or  
18 use additional water supplies during drought conditions.

19     (C) A description of other actions planned for implementation  
20 to improve drought resilience.

21     (b) Drought response planning, including all of the following:

22     (1) (A) Policies and a process for declaring a water shortage  
23 and for implementing water shortage allocations and related  
24 response actions.

25     (B) (i) *If a single reservoir constitutes at least 50 percent of*  
26 *the total water supply for the agricultural water supplier, the*  
27 *drought plan shall include a target water supply storage curve for*  
28 *that reservoir based on target carryover levels sufficient to satisfy*  
29 *water users and ecological streamflow needs pursuant to any*  
30 *applicable state, federal, or local regulations, and water quality*  
31 *needs pursuant to any state, federal, or local regulations for the*  
32 *current year and one dry year, with reasonably predicted inflow*  
33 *calculations considering local conditions and climate change.*

34     (ii) *Each month, the actual reservoir level shall be plotted*  
35 *against the target water supply storage curve on a calendar to*  
36 *determine whether target storage levels are met.*

37     (iii) *The drought plan shall include six standard reservoir*  
38 *shortage levels corresponding to water levels below the target*  
39 *water supply storage curve in progressive ranges of up to 10-, 20-,*

1 30-, 40-, and 50-percent shortages, and greater than 50-percent  
2 shortage.

3 (iv) At each reservoir shortage level, an agricultural water  
4 supplier shall initiate response actions that align with the shortage  
5 level, including, at a minimum, both of the following:

6 (I) Locally appropriate demand reduction actions to adequately  
7 respond to shortages.

8 (II) Additional mandatory prohibitions against specific water  
9 use practices that are in addition to state-mandated prohibitions  
10 and appropriate to the local conditions.

11 (v) For each response action, the agricultural water supplier  
12 shall prepare an estimate of the extent to which the gap between  
13 the target reservoir storage level and the actual reservoir storage  
14 level will be reduced by implementation of the action.

15 (vi) For each response action, the agricultural water supplier  
16 shall prepare an estimate of impacts on other water resources,  
17 including any increase in groundwater extraction.

18 (2) Methods and procedures for the enforcement or appeal of,  
19 or exemption from, triggered shortage response actions.

20 (3) Methods and procedures for monitoring and evaluation of  
21 the effectiveness of the drought plan.

22 (4) Communication protocols and procedures to inform and  
23 coordinate customers, the public, interested parties, and local,  
24 regional, and state government.

25 (5) A description of the potential impacts on the revenues,  
26 financial condition, and planned expenditures of the agricultural  
27 water supplier during drought conditions that reduce water  
28 allocations, and proposed measures to overcome those impacts,  
29 including reserve-level policies.

AMENDED IN ASSEMBLY MAY 18, 2023  
AMENDED IN ASSEMBLY MARCH 16, 2023  
CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 755**

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**Introduced by Assembly Member Papan**

February 13, 2023

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An act to add Chapter 3.8 (commencing with Section 390) to Division 1 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 755, as amended, Papan. Water: public entity: cost-of-service analysis.

Existing law authorizes a public entity that supplies water at retail or wholesale within its service area to adopt, in accordance with specified procedures, and enforce a water conservation program.

This bill would require a public entity, as defined, that conducts a cost-of-service analysis, as defined, to identify the *total* incremental costs incurred by *all* the major water users, as described, in the single-family residential class and the *total* incremental costs that would be avoided if major water users met a specified efficiency goal. The bill would also require ~~the incremental costs incurred by the major water users~~ *both of those costs* to be made publicly available by posting the information ~~on~~ *in* the public entity's ~~internet website~~. *cost-of-service analysis*. By requiring a higher level of service of public entities, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Chapter 3.8 (commencing with Section 390) is  
2 added to Division 1 of the Water Code, to read:

3  
4 CHAPTER 3.8. WATER: COST-OF-SERVICE ANALYSIS

5  
6 390. For purposes of this chapter, the following terms have the  
7 following meanings:

8 (a) “Cost-of-service analysis” means the analysis conducted to  
9 determine water usage patterns and demands placed on the system  
10 by various customer classes.

11 (b) “Efficiency goal” means the long-term standards for efficient  
12 water use, as developed by the board, pursuant to ~~Section 10609.2.~~  
13 *10609.2, as applied to an individual household.*

14 (c) “Incremental costs” means the costs of water service,  
15 including capital costs and operation and maintenance costs, that  
16 the public entity incurs directly, or by contract, as a result of the  
17 use of water by the systems’ major water users and may include  
18 any of the following:

19 (1) Conservation best management practices, conservation  
20 education, irrigation controls and other conservation devices, and  
21 other demand management measures.

22 (2) Water system retrofitting, dual plumbing and facilities for  
23 production, distribution, and all uses of recycled water and other  
24 alternative water supplies.

25 (3) Projects and programs for the prevention, control, or  
26 treatment of the runoff of water from irrigation and other outdoor  
27 water uses. Incremental costs does not include the costs of  
28 stormwater management systems and programs.

1 (4) Securing dry year water supply arrangements.  
2 (5) Procuring water supplies, including supply or capacity  
3 contracts for water supply rights or entitlements.

4 (6) Energy costs for water delivery.

5 (d) “Major water user” means the top 10 percent of water users  
6 in a given customer class since the last ~~cost-of-service~~  
7 *cost-of-service* analysis.

8 (e) “Public entity” means a city, whether general law or  
9 chartered, county, city and county, special district, agency,  
10 authority, any other municipal public corporation or district, or  
11 any other political subdivision of the state that provides retail water  
12 service and that is an urban water supplier, as defined in Section  
13 10617.

14 390.1. (a) Whenever a public entity conducts a cost-of-service  
15 analysis, that entity shall identify both of the following:

16 (1) The *total* incremental costs incurred by *all* the major water  
17 users in the single-family residential class.

18 (2) The *total* incremental costs that would be avoided if major  
19 water users met a specified efficiency goal.

20 (b) ~~The incremental costs incurred by the major water users, as~~  
21 ~~identified pursuant to subdivision (a), costs identified in paragraphs~~  
22 ~~(1) and (2) of subdivision (a)~~ shall be made publicly available by  
23 posting the information ~~on~~ in the public entity’s ~~internet website.~~  
24 *cost-of-service analysis.*

25 SEC. 2. The Legislature finds and declares that water  
26 conservation is a matter of statewide concern and is not a municipal  
27 affair as that term is used in Section 5 of Article XI of the  
28 California Constitution. Therefore, Section 1 of this act adding  
29 Section 390.1 to the Water Code applies to all cities, including  
30 charter cities.

31 SEC. 3. If the Commission on State Mandates determines that  
32 this act contains costs mandated by the state, reimbursement to  
33 local agencies and school districts for those costs shall be made  
34 pursuant to Part 7 (commencing with Section 17500) of Division  
35 4 of Title 2 of the Government Code.

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY APRIL 20, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1337**

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**Introduced by Assembly Member Wicks**

February 16, 2023

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An act to amend Sections 1052 and 1831 of, and to add Chapter 2.5 (commencing Section 1065) to Part 1 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, as amended, Wicks. State Water Resources Control Board: water diversion curtailment.

(1) Under existing law, the diversion or use of water other than as authorized by specified provisions of law is a trespass, subject to specified civil liability.

This bill would expand the instances when the diversion or use of water is considered a trespass.

(2) Existing law establishes the State Water Resources Control Board in the California Environmental Protection Agency and vests the board with various powers and duties, including, among other things, to ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this state. Existing law authorizes the board to adopt emergency regulations if, among other things, the regulations are 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.

This bill would authorize the board to issue a curtailment order for any diversion, regardless of basis of right, when water is not available under the diverter’s priority of right. The bill would ~~authorize~~ *require* the board to adopt regulations to implement this provision.

(3) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements relating to water use.

This bill would additionally authorize the board to issue a cease and desist order when a water right holder fails to curtail diversions when water is unavailable under the water right holder’s priority of right.

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

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

1 SECTION 1. (a) It is the intent of the Legislature that the State  
2 Water Resources Control Board shall be able to exercise its full  
3 authority under Section 2 of Article X of the California  
4 Constitution, the public trust doctrine, and Division 1 (commencing  
5 with Section 100) and Division 2 (commencing with Section 1000)  
6 of the Water Code to ensure that the use or diversion of water  
7 under any claim of right serves the public interest.

8 (b) It is the intent of the Legislature that this bill clarify that the  
9 State Water Resources Control Board has the necessary authority  
10 to curtail pre-1914 water rights and address the gap in the state  
11 board’s authority revealed by the court in the series of cases known  
12 as the California Water Curtailment Cases.

13 SEC. 2. Section 1052 of the Water Code is amended to read:

14 1052. (a) The diversion or use of water ~~subject to this division~~  
15 other than as authorized is a trespass.

16 (b) (1) An action for the issuance of injunctive relief as may  
17 be warranted by way of temporary restraining order, preliminary  
18 injunction, or permanent injunction, may be brought by the  
19 Attorney General on behalf of the board, or in the Attorney  
20 General’s independent capacity in the name of the people of the  
21 State of California, where the diversion or use of water is  
22 threatened, is occurring, or has occurred.

1 (2) (A) A civil action for a violation under this section resulting  
2 from unlicensed cannabis cultivation may also be brought by a  
3 city attorney or county counsel, upon approval of the board, in the  
4 name of the people of the State of California.

5 (B) A city attorney or county counsel shall inform and  
6 coordinate with the board as to the investigation of potential  
7 violations of this section related to unlicensed cannabis cultivation.  
8 Unless the board withholds its approval within 21 days after the  
9 local jurisdiction provides notice of its intent to file, the local  
10 jurisdiction may deem the board's silence as approval.

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

13 (1) If the unauthorized diversion or use occurs in a critically  
14 dry year immediately preceded by two or more consecutive below  
15 normal, dry, or critically dry years, or during a period for which  
16 the Governor has issued a proclamation of a state of emergency  
17 under the California Emergency Services Act (Chapter 7  
18 commencing with Section 8550) of Division 1 of Title 2 of the  
19 Government Code) based on drought conditions, the sum of the  
20 following:

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

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

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

29 (3) Notwithstanding paragraphs (1) and (2), up to three thousand  
30 five hundred dollars (\$3,500) for each day in which the  
31 unauthorized diversion or use for unlicensed cannabis cultivation  
32 occurs.

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

35 (1) The superior court may impose civil liability in an action  
36 brought by the Attorney General, upon request of the board, to  
37 impose, assess, and recover any sums pursuant to subdivision (c).  
38 In determining the appropriate amount, the court shall take into  
39 consideration all relevant circumstances, including, but not limited  
40 to, the extent of harm caused by the violation, the nature and

1 persistence of the violation, the length of time over which the  
2 violation occurs, and the corrective action, if any, taken by the  
3 violator.

4 (2) The superior court may impose civil liability in an action  
5 for a violation under this section resulting from unlicensed cannabis  
6 cultivation brought by a city attorney or county counsel to impose,  
7 assess, and recover any sums pursuant to subdivision (c). In  
8 determining the appropriate amount, the court shall take into  
9 consideration all relevant circumstances, including, but not limited  
10 to, the extent of harm caused by the violation, whether the violation  
11 was intentional or committed knowingly, the nature and persistence  
12 of the violation, the length of time over which the violation has  
13 occurred, and the corrective action, if any, taken by the violator.  
14 The court shall make its findings on the record.

15 (3) The board may impose civil liability in accordance with  
16 Section 1055.

17 (e) (1) Upon appropriation by the Legislature, funds recovered  
18 in an action pursuant to this section shall be used to proportionally  
19 reimburse the Attorney General, city attorney, county counsel, and  
20 the board for costs of bringing the action, including reasonable  
21 attorney’s fees, and of investigating the violation and supporting  
22 the prosecution of the action.

23 (2) Except for reimbursements to the Attorney General, city  
24 attorney, or county counsel, as specified in paragraph (1), all funds  
25 recovered pursuant to this section shall be deposited in the Water  
26 Rights Fund established pursuant to Section 1550.

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

29 SEC. 3. Chapter 2.5 (commencing with Section 1065) is added  
30 to Part 1 of Division 2 of the Water Code, to read:

31

32 CHAPTER 2.5. WATER SHORTAGE ENFORCEMENT

33

34 1065. (a) The board may issue a curtailment order for any  
35 diversion, regardless of basis of right, when water is not available  
36 under the diverter’s priority of right.

37 (b) Failure to comply with a curtailment order is a ~~trespass as~~  
38 ~~provided in Section 1052.~~ *trespass*.

39 (c) The board ~~may~~ *shall* adopt regulations to implement this  
40 section.

1 SEC. 4. Section 1831 of the Water Code is amended to read:

2 1831. (a) When the board determines that any person is  
3 violating, or threatening to violate, any requirement described in  
4 subdivision (d), the board may issue an order to that person to  
5 cease and desist from that violation.

6 (b) The cease and desist order shall require that person to comply  
7 forthwith or in accordance with a time schedule set by the board.

8 (c) The board may issue a cease and desist order only after  
9 notice and an opportunity for hearing pursuant to Section 1834.

10 (d) The board may issue a cease and desist order in response to  
11 a violation or threatened violation of any of the following:

12 (1) The prohibition set forth in Section 1052 against the  
13 unauthorized diversion or use of water subject to this division.

14 (2) When a water right holder fails to curtail diversions when  
15 water is unavailable under the water right holder's priority of right.

16 (3) Any term or condition of a permit, license, certification, or  
17 registration issued under this division.

18 (4) Any decision or order of the board issued under this part,  
19 Section 275, Chapter 11 (commencing with Section 10735) of Part  
20 2.74 of Division 6, or Article 7 (commencing with Section 13550)  
21 of Chapter 7 of Division 7, in which decision or order the person  
22 to whom the cease and desist order will be issued, or a predecessor  
23 in interest to that person, was named as a party directly affected  
24 by the decision or order.

25 (5) A regulation adopted under Section 1058.5.

26 (6) Any extraction restriction, limitation, order, or regulation  
27 adopted or issued under Chapter 11 (commencing with Section  
28 10735) of Part 2.74 of Division 6.

29 (7) Any diversion or use of water for cannabis cultivation if any  
30 of paragraphs (1) to (6), inclusive, or any of the following applies:

31 (A) A license is required, but has not been obtained, under  
32 Chapter 6 (commencing with Section 26060) or Chapter 7  
33 (commencing with Section 26070) of Division 10 of the Business  
34 and Professions Code.

35 (B) The diversion is not in compliance with an applicable  
36 limitation or requirement established by the board or the  
37 Department of Fish and Wildlife under Section 13149.

38 (C) The diversion or use is not in compliance with a requirement  
39 imposed under paragraphs (1) and (2) of subdivision (b) of Section

- 1 26060.1 of, and paragraph (3) of subdivision (a) of Section 26070
- 2 of, the Business and Professions Code.
- 3 (e) This article does not alter the regulatory authority of the
- 4 board under other provisions of law.

O

118TH CONGRESS  
1ST SESSION

# H. R. 2964

To require the Federal Trade Commission to issue regulations requiring certain products to have “Do Not Flush” labeling, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2023

Mrs. McCLAIN (for herself and Mrs. PELTOLA) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To require the Federal Trade Commission to issue regulations requiring certain products to have “Do Not Flush” labeling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wastewater Infrastruc-  
5 ture Pollution Prevention and Environmental Safety Act”  
6 or the “WIPPES Act”.

7 **SEC. 2. “DO NOT FLUSH” LABELING.**

8 (a) IN GENERAL.—

9 (1) REGULATIONS.—Not later than 2 years  
10 after the date of enactment of this section, the Fed-

1       eral Trade Commission shall issue regulations under  
2       section 553 of title 5, United States Code, requiring  
3       covered entities to label covered products clearly and  
4       conspicuously with “Do Not Flush” label notices  
5       and symbols in accordance with this section.

6               (2) CONSULTATION WITH OTHER AGENCIES.—

7       In developing the regulations required under para-  
8       graph (1), the Federal Trade Commission may con-  
9       sult with the Administrator of the Environmental  
10      Protection Agency, the Commissioner of Food and  
11      Drugs, and the Consumer Product Safety Commis-  
12      sion as appropriate depending on the type of covered  
13      product involved.

14              (b) REQUIREMENTS.—

15              (1) CYLINDRICAL PACKAGING.—In issuing reg-  
16      ulations under subsection (a), the Commission shall  
17      require a covered product sold in cylindrical or near-  
18      cylindrical packaging, and intended to dispense indi-  
19      vidual wipes, to have—

20              (A) the symbol and label notice on the  
21              principal display panel in a location reasonably  
22              visible to the user each time a wipe is dis-  
23              pensed; or

24              (B) the symbol on the principal display  
25              panel and the label notice, or a combination of

1           the label notice and symbol, on a flip lid in a  
2           manner that covers at least 8 percent of the  
3           surface area of the flip lid.

4           (2) FLEXIBLE FILM PACKAGING.—In issuing  
5           regulations under subsection (a), the Commission  
6           shall require a covered product sold in flexible film  
7           packaging, and intended to dispense individual  
8           wipes, to have—

9                   (A) the symbol on the principal display  
10                  panel and, if the principal display panel is not  
11                  on the dispensing side of the packaging, on the  
12                  dispensing side panel; and

13                   (B) the label notice on either the principal  
14                  display panel or the dispensing side panel, in a  
15                  prominent location reasonably visible to the  
16                  user each time a wipe is dispensed.

17           (3) RIGID PACKAGING.—In issuing regulations  
18           under subsection (a), the Commission shall require  
19           a covered product sold in a refillable tub or other  
20           rigid packaging that may be reused by a customer,  
21           and intended to dispense individual wipes, to have  
22           the symbol and label notice on the principal display  
23           panel in a prominent location reasonably visible to  
24           the user each time a wipe is dispensed.

1           (4) PACKAGING NOT INTENDED TO DISPENSE  
2 INDIVIDUAL WIPES.—In issuing regulations under  
3 subsection (a), the Commission shall require a cov-  
4 ered product sold in packaging that is not intended  
5 to dispense individual wipes to have the symbol and  
6 label notice on the principal display panel in a  
7 prominent location reasonably visible to the user of  
8 the covered product.

9           (5) BULK PACKAGING.—

10           (A) IN GENERAL.—In issuing regulations  
11 under subsection (a), the Commission shall re-  
12 quire a covered product sold in bulk at retail to  
13 have labeling in compliance with such regula-  
14 tions on both the outer packaging visible at re-  
15 tail and the individual packaging contained  
16 within the outer packaging.

17           (B) EXEMPTION.—The Commission shall  
18 exempt from the requirements under subpara-  
19 graph (A) the following:

20           (i) Individually packaged covered  
21 products that are contained within outer  
22 packaging, are not intended to dispense in-  
23 dividual wipes, and have no retail labeling.

24           (ii) Outer packaging that does not ob-  
25 scure the symbol and label notice on indi-

1           vidually packaged covered products con-  
2           tained within.

3           (6) PACKAGING OF COMBINED PRODUCTS.—

4           (A) OUTER PACKAGING.—In issuing regu-  
5           lations under subsection (a), the Commission  
6           shall exempt the outer packaging of a combined  
7           product from the requirements of such regula-  
8           tions.

9           (B) PACKAGES LESS THAN 3 BY 3  
10          INCHES.—In issuing regulations under sub-  
11          section (a), the Commission shall provide that,  
12          with respect to a covered product in packaging  
13          smaller than 3 inches by 3 inches (such as an  
14          individually packaged wipe in tear-top pack-  
15          aging) and sold as part of a combined product,  
16          if a symbol and label notice are placed in a  
17          prominent location reasonably visible to the  
18          user of the covered product, such covered prod-  
19          uct is considered to be labeled clearly and con-  
20          spicuously in accordance with such regulations.

21          (c) REASONABLE VISIBILITY OF SYMBOL AND LABEL  
22          NOTICE.—

23          (1) IN GENERAL.—In requiring the symbol and  
24          label notice under this section, the Commission shall  
25          require that—

1 (A) packaging seams or folds or other  
2 packaging design elements do not obscure the  
3 symbol or label notice;

4 (B) the symbol and label notice are each  
5 equal in size to at least 2 percent of the surface  
6 area of the principal display panel; and

7 (C) the symbol and label notice have high  
8 contrast with the immediate background of the  
9 packaging so that such symbol and label notice  
10 may be seen and read by an ordinary individual  
11 under customary conditions of purchase and  
12 use.

13 (2) PROXIMITY OF SYMBOL AND LABEL NO-  
14 TICE.—In requiring the symbol and label notice  
15 under this section, the Commission may allow a  
16 symbol and label notice on a principal display panel  
17 to be placed adjacently or on separate areas of the  
18 principal display panel.

19 (3) EXCEPTION.—Paragraph (1)(C) does not  
20 apply to an embossed symbol or label notice on the  
21 flip lid of a covered product sold in cylindrical or  
22 near-cylindrical packaging.

23 (d) ADDITIONAL WORDS OR PHRASES.—In issuing  
24 regulations under subsection (a), the Commission shall  
25 allow additional words or phrases on a covered product

1 that describe consequences associated with flushing or dis-  
2 posing of such covered product, if such words or phrases  
3 are consistent with the purposes of this section.

4 (e) REPRESENTATIONS OF FLUSHABILITY.—In  
5 issuing regulations under subsection (a), the Commission  
6 shall prohibit, with respect to a covered product, the rep-  
7 resentation or marketing of flushable attributes, perform-  
8 ance, or efficacy benefits.

9 (f) COMPLIANCE WITH OTHER REQUIREMENTS.—

10 (1) FIFRA REQUIREMENTS.—

11 (A) IN GENERAL.—Not later than 2 years  
12 after the date of the enactment of this Act, the  
13 Commission and the Administrator of the Envi-  
14 ronmental Protection Agency, acting jointly,  
15 shall issue regulations that, with respect to a  
16 covered product that contains a pesticide re-  
17 quired to be registered under the Federal Insec-  
18 ticide, Fungicide, and Rodenticide Act (7  
19 U.S.C. 136 et seq.), include the following:

20 (i) Instructions describing how such a  
21 covered product may comply with the re-  
22 quirements of such Act and the regulations  
23 issued under subsection (a).

24 (ii) A requirement that, not later than  
25 90 days after the date on which regula-

1           tions are issued under this subparagraph,  
2           a covered entity shall submit for approval  
3           by the Administrator of the Environmental  
4           Protection Agency a product label compli-  
5           ant with such instructions.

6           (B) ENFORCEMENT.—For purposes of sub-  
7           section (h), a violation of a regulation issued  
8           under subparagraph (A) shall be treated as a  
9           violation of a regulation issued under subsection  
10          (a).

11          (2) TYPE SIZE EXCEPTION.—If the label notice  
12          type size otherwise required by the regulations  
13          issued under subsection (a) for a covered product  
14          would conflict with a labeling requirement under the  
15          Federal Insecticide, Fungicide, and Rodenticide Act  
16          (7 U.S.C. 136 et seq.) or the Federal Hazardous  
17          Substances Act (15 U.S.C. 1261 et seq.), the Com-  
18          mission may, in issuing such regulations, provide for  
19          a label notice type size requirement for the covered  
20          product under this section that—

21                (A) in the case of a covered product re-  
22                quired to display a warning pursuant to the  
23                Federal Insecticide, Fungicide, and Rodenticide  
24                Act regarding a pesticide in such covered prod-  
25                uct, requires a type size for the label notice

1 under this paragraph that is equal to or greater  
2 than the type size required for the “keep out of  
3 reach of children” statement under such Act;  
4 and

5 (B) in the case of a covered product re-  
6 quired to contain first aid instructions pursuant  
7 to the Federal Hazardous Substances Act, re-  
8 quires a type size for the label notice under this  
9 paragraph that is equal to or greater than the  
10 type size required for such first aid instruc-  
11 tions.

12 (g) APPLICABILITY.—The Commission shall provide  
13 that the regulations issued under subsection (a) apply with  
14 respect to covered products manufactured on or after the  
15 date that is 90 days after the date on which such regula-  
16 tions are issued.

17 (h) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
18 SION.—

19 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
20 TICES.—A violation of a regulation promulgated  
21 under subsection (a) shall be treated as a violation  
22 of a regulation under section 18(a)(1)(B) of the  
23 Federal Trade Commission Act (15 U.S.C.  
24 57a(a)(1)(B)) regarding unfair or deceptive acts or  
25 practices.

1           (2) POWERS OF COMMISSION.—Except as pro-  
2           vided in paragraph (3), the Commission shall en-  
3           force the regulations promulgated under subsection  
4           (a) in the same manner, by the same means, and  
5           with the same jurisdiction, powers, and duties as  
6           though all applicable terms and provisions of the  
7           Federal Trade Commission Act (15 U.S.C. 41 et  
8           seq.) were incorporated into and made a part of this  
9           section, and any person who violates such a regula-  
10          tion shall be subject to the penalties and entitled to  
11          the privileges and immunities provided in the Fed-  
12          eral Trade Commission Act.

13          (3) PENALTY AMOUNTS.—Notwithstanding sec-  
14          tion 5 of the Federal Trade Commission Act (15  
15          U.S.C. 45), any civil penalties imposed under such  
16          section with respect to a violation of a regulation  
17          promulgated under subsection (a) of this section  
18          shall be in accordance with the following:

19                 (A) A fine of not more than \$2,500 for  
20                 each day that a violation occurs.

21                 (B) In no event may the total amount of  
22                 fines imposed for a single violation exceed  
23                 \$100,000.

24          (i) PREEMPTION OF STATE LAWS.—No State or po-  
25          litical subdivision of a State may directly or indirectly es-

1 tablish or continue in effect under any authority restric-  
2 tions with respect to the “Do Not Flush” labeling of cov-  
3 ered products that are not identical to the restrictions  
4 under this section.

5 (j) DEFINITIONS.—In this Act:

6 (1) COMBINED PRODUCT.—The term “com-  
7 bined product” means two or more products sold in  
8 shared retail packaging, of which—

9 (A) at least one of the products is a cov-  
10 ered product; and

11 (B) at least one of the products is another  
12 consumer product intended to be used in com-  
13 bination with such covered product.

14 (2) COMMISSION.—The term “Commission”  
15 means the Federal Trade Commission.

16 (3) COVERED ENTITY.—The term “covered en-  
17 tity” means a manufacturer, wholesaler, supplier, or  
18 retailer that is responsible for the labeling or retail  
19 packaging of a covered product that is sold or of-  
20 fered for sale in the United States.

21 (4) COVERED PRODUCT.—

22 (A) IN GENERAL.—The term “covered  
23 product” means a premoistened, nonwoven dis-  
24 posable wipe sold or offered for retail sale—

1 (i) that is marketed as a baby wipe or  
2 diapering wipe; or

3 (ii) that is a household or personal  
4 care wipe (including wipes described in  
5 subparagraph (B)) that—

6 (I) is composed entirely, or in  
7 part, of petrochemical-derived fibers;  
8 and

9 (II) has significant potential to  
10 be flushed.

11 (B) INCLUSIONS.—The wipes described in  
12 this subparagraph are—

13 (i) antibacterial wipes and disinfecting  
14 wipes;

15 (ii) wipes intended for general purpose  
16 cleaning or bathroom cleaning, including  
17 toilet cleaning and hard surface cleaning;  
18 and

19 (iii) wipes intended for personal care  
20 use on the body, including hand sanitizing,  
21 makeup removal, feminine hygiene, adult  
22 hygiene (including incontinence hygiene),  
23 and body cleansing.

1           (5) HIGH CONTRAST.—The term “high con-  
2           trast” means, with respect to the symbol or label no-  
3           tice, that such symbol or label notice—

4                   (A) is either light on a solid dark back-  
5                   ground or dark on a solid light background; and

6                   (B) has a contrast percentage of at least  
7                   70 percent between such symbol or label notice  
8                   and the background, using the formula  $(B1 -$   
9                    $B2) / B1 * 100 =$  contrast percentage, where  
10                  B1 is the light reflectance value of the lighter  
11                  area and B2 is the light reflectance value of the  
12                  darker area.

13           (6) LABEL NOTICE.—The term “label notice”  
14           means the written phrase “Do Not Flush”.

15           (7) PRINCIPAL DISPLAY PANEL.—The term  
16           “principal display panel” means the side of a prod-  
17           uct package that is most likely to be displayed, pre-  
18           sented, or shown under customary conditions of dis-  
19           play for retail sale, and—

20                   (A) in the case of a cylindrical or near-cy-  
21                   lindrical package, the surface area of which  
22                   constitutes at least 40 percent of the product  
23                   package, as measured by multiplying the height  
24                   by the circumference of the package; or

1           (B) in the case of a flexible film package  
2           in which a rectangular prism or near-rectan-  
3           gular prism stack of wipes is housed within the  
4           film, the surface area of which is measured by  
5           multiplying the length by the width of the side  
6           of the package when the flexible packaging film  
7           is pressed flat against the stack of wipes on all  
8           sides of the stack.

9           (8) SYMBOL.—The term “symbol” means the  
10          “Do Not Flush” symbol, as depicted in the Guide-  
11          lines for Assessing the Flushability of Disposable  
12          Nonwoven Products (Edition 4; May 2018) pub-  
13          lished by the Association of the Nonwoven Fabrics  
14          Industry (INDA) and the European Disposables  
15          And Nonwovens Association (EDANA), or an other-  
16          wise identical symbol depicting an individual of an-  
17          other gender.

○

118TH CONGRESS  
1ST SESSION

# S. 1350

To require the Federal Trade Commission to issue regulations requiring certain products to have “Do Not Flush” labeling, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 27, 2023

Mr. MERKLEY (for himself, Ms. COLLINS, Mr. KING, Mrs. SHAHEEN, Mr. WYDEN, Mr. MARKEY, Mr. BLUMENTHAL, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To require the Federal Trade Commission to issue regulations requiring certain products to have “Do Not Flush” labeling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wastewater Infrastruc-  
5 ture Pollution Prevention and Environmental Safety Act”  
6 or the “WIPPES Act”.

7 **SEC. 2. “DO NOT FLUSH” LABELING.**

8 (a) IN GENERAL.—

1           (1) REGULATIONS.—Not later than 2 years  
2 after the date of enactment of this section, the Fed-  
3 eral Trade Commission shall issue regulations under  
4 section 553 of title 5, United States Code, requiring  
5 covered entities to label covered products clearly and  
6 conspicuously with “Do Not Flush” label notices  
7 and symbols in accordance with this section.

8           (2) CONSULTATION WITH OTHER AGENCIES.—  
9 In developing the regulations required under para-  
10 graph (1), the Federal Trade Commission may con-  
11 sult with the Administrator of the Environmental  
12 Protection Agency, the Commissioner of Food and  
13 Drugs, and the Consumer Product Safety Commis-  
14 sion as appropriate depending on the type of covered  
15 product involved.

16 (b) REQUIREMENTS.—

17           (1) CYLINDRICAL PACKAGING.—In issuing reg-  
18 ulations under subsection (a), the Commission shall  
19 require a covered product sold in cylindrical or near-  
20 cylindrical packaging, and intended to dispense indi-  
21 vidual wipes, to have—

22                   (A) the symbol and label notice on the  
23 principal display panel in a location reasonably  
24 visible to the user each time a wipe is dis-  
25 pensed; or

1           (B) the symbol on the principal display  
2           panel and the label notice, or a combination of  
3           the label notice and symbol, on a flip lid in a  
4           manner that covers at least 8 percent of the  
5           surface area of the flip lid.

6           (2) FLEXIBLE FILM PACKAGING.—In issuing  
7           regulations under subsection (a), the Commission  
8           shall require a covered product sold in flexible film  
9           packaging, and intended to dispense individual  
10          wipes, to have—

11           (A) the symbol on the principal display  
12           panel and, if the principal display panel is not  
13           on the dispensing side of the packaging, on the  
14           dispensing side panel; and

15           (B) the label notice on either the principal  
16           display panel or the dispensing side panel, in a  
17           prominent location reasonably visible to the  
18           user each time a wipe is dispensed.

19           (3) RIGID PACKAGING.—In issuing regulations  
20           under subsection (a), the Commission shall require  
21           a covered product sold in a refillable tub or other  
22           rigid packaging that may be reused by a customer,  
23           and intended to dispense individual wipes, to have  
24           the symbol and label notice on the principal display

1 panel in a prominent location reasonably visible to  
2 the user each time a wipe is dispensed.

3 (4) PACKAGING NOT INTENDED TO DISPENSE  
4 INDIVIDUAL WIPES.—In issuing regulations under  
5 subsection (a), the Commission shall require a cov-  
6 ered product sold in packaging that is not intended  
7 to dispense individual wipes to have the symbol and  
8 label notice on the principal display panel in a  
9 prominent location reasonably visible to the user of  
10 the covered product.

11 (5) BULK PACKAGING.—

12 (A) IN GENERAL.—In issuing regulations  
13 under subsection (a), the Commission shall re-  
14 quire a covered product sold in bulk at retail to  
15 have labeling in compliance with such regula-  
16 tions on both the outer packaging visible at re-  
17 tail and the individual packaging contained  
18 within the outer packaging.

19 (B) EXEMPTION.—The Commission shall  
20 exempt from the requirements under subpara-  
21 graph (A) the following:

22 (i) Individually packaged covered  
23 products that are contained within outer  
24 packaging, are not intended to dispense in-  
25 dividual wipes, and have no retail labeling.

1 (ii) Outer packaging that does not ob-  
2 scure the symbol and label notice on indi-  
3 vidually packaged covered products con-  
4 tained within.

5 (6) PACKAGING OF COMBINED PRODUCTS.—

6 (A) OUTER PACKAGING.—In issuing regu-  
7 lations under subsection (a), the Commission  
8 shall exempt the outer packaging of a combined  
9 product from the requirements of such regula-  
10 tions.

11 (B) PACKAGES LESS THAN 3 BY 3  
12 INCHES.—In issuing regulations under sub-  
13 section (a), the Commission shall provide that,  
14 with respect to a covered product in packaging  
15 smaller than 3 inches by 3 inches (such as an  
16 individually packaged wipe in tear-top pack-  
17 aging) and sold as part of a combined product,  
18 if a symbol and label notice are placed in a  
19 prominent location reasonably visible to the  
20 user of the covered product, such covered prod-  
21 uct is considered to be labeled clearly and con-  
22 spicuously in accordance with such regulations.

23 (c) REASONABLE VISIBILITY OF SYMBOL AND LABEL  
24 NOTICE.—

1           (1) IN GENERAL.—In requiring the symbol and  
2 label notice under this section, the Commission shall  
3 require that—

4           (A) packaging seams or folds or other  
5 packaging design elements do not obscure the  
6 symbol or label notice;

7           (B) the symbol and label notice are each  
8 equal in size to at least 2 percent of the surface  
9 area of the principal display panel; and

10          (C) the symbol and label notice have high  
11 contrast with the immediate background of the  
12 packaging so that such symbol and label notice  
13 may be seen and read by an ordinary individual  
14 under customary conditions of purchase and  
15 use.

16          (2) PROXIMITY OF SYMBOL AND LABEL NO-  
17 TICE.—In requiring the symbol and label notice  
18 under this section, the Commission may allow a  
19 symbol and label notice on a principal display panel  
20 to be placed adjacently or on separate areas of the  
21 principal display panel.

22          (3) EXCEPTION.—Paragraph (1)(C) does not  
23 apply to an embossed symbol or label notice on the  
24 flip lid of a covered product sold in cylindrical or  
25 near-cylindrical packaging.

1           (d) ADDITIONAL WORDS OR PHRASES.—In issuing  
2 regulations under subsection (a), the Commission shall  
3 allow additional words or phrases on a covered product  
4 that describe consequences associated with flushing or dis-  
5 posing of such covered product, if such words or phrases  
6 are consistent with the purposes of this section.

7           (e) REPRESENTATIONS OF FLUSHABILITY.—In  
8 issuing regulations under subsection (a), the Commission  
9 shall prohibit, with respect to a covered product, the rep-  
10 resentation or marketing of flushable attributes, perform-  
11 ance, or efficacy benefits.

12           (f) COMPLIANCE WITH OTHER REQUIREMENTS.—

13               (1) FIFRA REQUIREMENTS.—

14                       (A) IN GENERAL.—Not later than 2 years  
15 after the date of the enactment of this Act, the  
16 Commission and the Administrator of the Envi-  
17 ronmental Protection Agency, acting jointly,  
18 shall issue regulations that, with respect to a  
19 covered product that contains a pesticide re-  
20 quired to be registered under the Federal Insec-  
21 ticide, Fungicide, and Rodenticide Act (7  
22 U.S.C. 136 et seq.), include the following:

23                               (i) Instructions describing how such a  
24 covered product may comply with the re-

1 requirements of such Act and the regulations  
2 issued under subsection (a).

3 (ii) A requirement that, not later than  
4 90 days after the date on which regula-  
5 tions are issued under this subparagraph,  
6 a covered entity shall submit for approval  
7 by the Administrator of the Environmental  
8 Protection Agency a product label compli-  
9 ant with such instructions.

10 (B) ENFORCEMENT.—For purposes of sub-  
11 section (h), a violation of a regulation issued  
12 under subparagraph (A) shall be treated as a  
13 violation of a regulation issued under subsection  
14 (a).

15 (2) TYPE SIZE EXCEPTION.—If the label notice  
16 type size otherwise required by the regulations  
17 issued under subsection (a) for a covered product  
18 would conflict with a labeling requirement under the  
19 Federal Insecticide, Fungicide, and Rodenticide Act  
20 (7 U.S.C. 136 et seq.) or the Federal Hazardous  
21 Substances Act (15 U.S.C. 1261 et seq.), the Com-  
22 mission may, in issuing such regulations, provide for  
23 a label notice type size requirement for the covered  
24 product under this section that—

1 (A) in the case of a covered product re-  
2 quired to display a warning pursuant to the  
3 Federal Insecticide, Fungicide, and Rodenticide  
4 Act regarding a pesticide in such covered prod-  
5 uct, requires a type size for the label notice  
6 under this paragraph that is equal to or greater  
7 than the type size required for the “keep out of  
8 reach of children” statement under such Act;  
9 and

10 (B) in the case of a covered product re-  
11 quired to contain first aid instructions pursuant  
12 to the Federal Hazardous Substances Act, re-  
13 quires a type size for the label notice under this  
14 paragraph that is equal to or greater than the  
15 type size required for such first aid instruc-  
16 tions.

17 (g) APPLICABILITY.—The Commission shall provide  
18 that the regulations issued under subsection (a) apply with  
19 respect to covered products manufactured on or after the  
20 date that is 90 days after the date on which such regula-  
21 tions are issued.

22 (h) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
23 SION.—

24 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
25 TICES.—A violation of a regulation promulgated

1 under subsection (a) shall be treated as a violation  
2 of a regulation under section 18(a)(1)(B) of the  
3 Federal Trade Commission Act (15 U.S.C.  
4 57a(a)(1)(B)) regarding unfair or deceptive acts or  
5 practices.

6 (2) POWERS OF COMMISSION.—Except as pro-  
7 vided in paragraph (3), the Commission shall en-  
8 force the regulations promulgated under subsection  
9 (a) in the same manner, by the same means, and  
10 with the same jurisdiction, powers, and duties as  
11 though all applicable terms and provisions of the  
12 Federal Trade Commission Act (15 U.S.C. 41 et  
13 seq.) were incorporated into and made a part of this  
14 section, and any person who violates such a regula-  
15 tion shall be subject to the penalties and entitled to  
16 the privileges and immunities provided in the Fed-  
17 eral Trade Commission Act.

18 (3) PENALTY AMOUNTS.—Notwithstanding sec-  
19 tion 5 of the Federal Trade Commission Act (15  
20 U.S.C. 45), any civil penalties imposed under such  
21 section with respect to a violation of a regulation  
22 promulgated under subsection (a) of this section  
23 shall be in accordance with the following:

24 (A) A fine of not more than \$2,500 for  
25 each day that a violation occurs.

1           (B) In no event may the total amount of  
2           fines imposed for a single violation exceed  
3           \$100,000.

4           (i) PREEMPTION OF STATE LAWS.—No State or po-  
5           litical subdivision of a State may directly or indirectly es-  
6           tablish or continue in effect under any authority restric-  
7           tions with respect to the “Do Not Flush” labeling of cov-  
8           ered products that are not identical to the restrictions  
9           under this section.

10          (j) DEFINITIONS.—In this Act:

11           (1) COMBINED PRODUCT.—The term “com-  
12           bined product” means two or more products sold in  
13           shared retail packaging, of which—

14           (A) at least one of the products is a cov-  
15           ered product; and

16           (B) at least one of the products is another  
17           consumer product intended to be used in com-  
18           bination with such covered product.

19           (2) COMMISSION.—The term “Commission”  
20           means the Federal Trade Commission.

21           (3) COVERED ENTITY.—The term “covered en-  
22           tity” means a manufacturer, wholesaler, supplier, or  
23           retailer that is responsible for the labeling or retail  
24           packaging of a covered product that is sold or of-  
25           fered for sale in the United States.

1 (4) COVERED PRODUCT.—

2 (A) IN GENERAL.—The term “covered  
3 product” means a premoistened, nonwoven dis-  
4 posable wipe sold or offered for retail sale—

5 (i) that is marketed as a baby wipe or  
6 diapering wipe; or

7 (ii) that is a household or personal  
8 care wipe (including wipes described in  
9 subparagraph (B)) that—

10 (I) is composed entirely, or in  
11 part, of petrochemical-derived fibers;  
12 and

13 (II) has significant potential to  
14 be flushed.

15 (B) INCLUSIONS.—The wipes described in  
16 this subparagraph are—

17 (i) antibacterial wipes and disinfecting  
18 wipes;

19 (ii) wipes intended for general purpose  
20 cleaning or bathroom cleaning, including  
21 toilet cleaning and hard surface cleaning;  
22 and

23 (iii) wipes intended for personal care  
24 use on the body, including hand sanitizing,  
25 makeup removal, feminine hygiene, adult

1 hygiene (including incontinence hygiene),  
2 and body cleansing.

3 (5) HIGH CONTRAST.—The term “high con-  
4 trast” means, with respect to the symbol or label no-  
5 tice, that such symbol or label notice—

6 (A) is either light on a solid dark back-  
7 ground or dark on a solid light background; and

8 (B) has a contrast percentage of at least  
9 70 percent between such symbol or label notice  
10 and the background, using the formula  $(B1 -$   
11  $B2) / B1 * 100 =$  contrast percentage, where  
12 B1 is the light reflectance value of the lighter  
13 area and B2 is the light reflectance value of the  
14 darker area.

15 (6) LABEL NOTICE.—The term “label notice”  
16 means the written phrase “Do Not Flush”.

17 (7) PRINCIPAL DISPLAY PANEL.—The term  
18 “principal display panel” means the side of a prod-  
19 uct package that is most likely to be displayed, pre-  
20 sented, or shown under customary conditions of dis-  
21 play for retail sale, and—

22 (A) in the case of a cylindrical or near-cy-  
23 lindrical package, the surface area of which  
24 constitutes at least 40 percent of the product

1 package, as measured by multiplying the height  
2 by the circumference of the package; or

3 (B) in the case of a flexible film package  
4 in which a rectangular prism or near-rectan-  
5 gular prism stack of wipes is housed within the  
6 film, the surface area of which is measured by  
7 multiplying the length by the width of the side  
8 of the package when the flexible packaging film  
9 is pressed flat against the stack of wipes on all  
10 sides of the stack.

11 (8) SYMBOL.—The term “symbol” means the  
12 “Do Not Flush” symbol, as depicted in the Guide-  
13 lines for Assessing the Flushability of Disposable  
14 Nonwoven Products (Edition 4; May 2018) pub-  
15 lished by the Association of the Nonwoven Fabrics  
16 Industry (INDA) and the European Disposables  
17 And Nonwovens Association (EDANA), or an other-  
18 wise identical symbol depicting an individual of an-  
19 other gender.

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