

ASSEMBLY BILL

No. 377

Introduced by Assembly Member Robert Rivas
(Principal coauthor: Senator Hertzberg)

February 1, 2021

An act to add Chapter 3.5 (commencing with Section 13150) to Chapter 3 of Division 7 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as introduced, Robert Rivas. Water quality: impaired waters.

(1) Under existing law, the State Water Resources Control Board and the 9 California regional water quality control boards regulate water quality and prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. Existing law requires each regional board to formulate and adopt water quality control plans for all areas within the region, as provided.

This bill would require all California surface waters to be fishable, swimmable, and drinkable by January 1, 2050, as prescribed. The bill would prohibit the state board and regional boards from authorizing an NPDES discharge, waste discharge requirement, or waiver of a waste discharge requirement that causes or contributes to an exceedance of a water quality standard, or from authorizing a best management practice permit term to authorize a discharge that causes or contributes to an exceedance of a water quality standard in receiving waters. The bill would prohibit, on or after January 1, 2030, a regional water quality control plan from including a schedule for implementation for achieving a water quality standard that was adopted as of January 1, 2021, and

would prohibit a regional water quality control plan from including a schedule for implementation of a water quality standard that is adopted after January 1, 2021, unless specified conditions are met. The bill would prohibit an NPDES permit, waste discharge requirement, or waiver of a waste discharge requirement from being renewed, reissued, or modified to contain effluent limitations or conditions that are less stringent than those in the previous permit, requirement, or waiver.

(2) Existing law authorizes the imposition of civil penalties for violations of certain waste discharge requirements and requires that penalties imposed pursuant to these provisions be deposited into the Waste Discharge Permit Fund, to be expended by the state board, upon appropriation by the Legislature, for specified purposes related to water quality. For violations of certain other waste discharge requirements, including the violation of a waste discharge requirement effluent limitation, existing law imposes specified civil penalties, the proceeds of which are deposited into the continuously appropriated State Water Pollution Cleanup and Abatement Account, which is established in the State Water Quality Control Fund.

This bill would require, by January 1, 2030, the state board and regional boards to develop an Impaired Waterways Enforcement Program to enforce all remaining water quality standard violations that are causing or contributing to an exceedance of a water quality standard. To ensure any water segments impaired by ongoing pollutants are brought into attainment with water quality standards, the bill would require the state board and regional boards, by January 1, 2040, to evaluate the state's remaining impaired waters using a specified report. The bill would require, by January 1, 2040, the state board and regional boards to report to the Legislature a plan to bring the final impaired water segments into attainment by January 1, 2050. The bill would create the Waterway Attainment Account in the Waste Discharge Permit Fund and would make moneys in the Waterway Attainment Account available for the state board to expend, upon appropriation by the Legislature, to bring remaining impaired water segments into attainment in accordance with the plan. The bill would create in the Waterway Attainment Account the Waterway Attainment Penalty Subaccount, composed of penalties obtained pursuant to the Impaired Waterways Enforcement Program, and would make moneys in the subaccount available for the state board to expend, upon appropriation by the Legislature, for purposes of the program. The bill would require, by January 1, 2040, and subject to a future legislative act, 50% of the annual

proceeds of the State Water Pollution Cleanup and Abatement Account to be annually transferred to the Waterway Attainment Account. The bill would require the state board, upon appropriation by the Legislature, to expend 5% of the annual proceeds of the State Water Pollution Cleanup and Abatement Account to fund a specified state board program.

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 all of the
2 following:

3 (1) Water is a necessity of human life, and every Californian
4 deserves access to clean and safe water. Yet climate change
5 jeopardizes the quality and safety of our water. Climate change is
6 impacting the state's hydrology to create water resource
7 vulnerabilities that include, but are not limited to, changes to water
8 supplies, subsidence, increased amounts of water pollution, erosion,
9 flooding, and related risks to water and wastewater infrastructure
10 and operations, degradation of watersheds, alteration of aquatic
11 ecosystems and loss of habitat, multiple impacts in coastal areas,
12 and ocean acidification.

13 (2) Many aspects of climate change and associated impacts will
14 continue for centuries, even if anthropogenic emissions of
15 greenhouse gases are reduced or stopped. Given the magnitude of
16 climate change impacts on California's hydrology and water
17 systems, the state's climate change response should include
18 attainment of water quality standards to allow the state's
19 watersheds to resiliently adapt to forthcoming and inevitable
20 climate change stressors.

21 (3) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)
22 was enacted on October 18, 1972, to establish the basic structure
23 for regulating discharges of pollutants into the waters of the United
24 States and regulating quality standards for surface waters. The
25 objective of the federal Clean Water Act is to restore and maintain
26 the chemical, physical, and biological integrity of the nation's
27 waters. To achieve that objective, Congress declared a national
28 goal that the discharge of pollutants into navigable waters be
29 eliminated by 1985.

1 (4) California has long been a national and international leader
2 on environmental stewardship efforts, including the areas of air
3 quality protections, energy efficiency requirements, renewable
4 energy standards, and greenhouse gas emission standards for
5 passenger vehicles. The program established by this act will
6 continue this tradition of environmental leadership by placing
7 California at the forefront of achieving the nation’s goal of making
8 all waterways swimmable, fishable, and drinkable.

9 (5) The State Water Resources Control Board, along with the
10 nine California regional water quality control boards, protect and
11 enhance the quality of California’s water resources through
12 implementing the federal Clean Water Act, as amended, and
13 California’s Porter-Cologne Water Quality Control Act (Division
14 7 (commencing with Section 13000) of the Water Code).

15 (6) The State Water Resources Control Board’s mission is to
16 “preserve, enhance, and restore the quality of California’s water
17 resources and drinking water for the protection of the environment,
18 public health, and all beneficial uses, and to ensure proper water
19 resource allocation and efficient use, for the benefit of present and
20 future generations.”

21 (7) Under Section 303(d) of the federal Clean Water Act (33
22 U.S.C. 1313(d)), California is required to review, make changes
23 as necessary, and submit to the United States Environmental
24 Protection Agency a list identifying water bodies not meeting water
25 quality standards (303(d) list). California is required to include a
26 priority ranking of those waters, taking into account the severity
27 of the pollution and the uses to be made of those waters, including
28 waters targeted for the development of total maximum daily loads
29 (TMDLs).

30 (8) As of the most recent 2018 303(d) list, nearly 95 percent of
31 all fresh waters assessed in California, and over 1,400 water bodies,
32 are listed as impaired, with only 114 TMDLs have been approved
33 since 2009 in California. Of 164,741 assessed miles of rivers and
34 streams, 82 percent were impaired. Of 929,318 assessed acres of
35 lakes, reservoirs, and ponds, 93 percent were impaired. Of 575,000
36 assessed acres of bays, harbors, and estuaries, 99 percent were
37 impaired. Of 2,180 assessed miles of coastal shoreline, 93 percent
38 were impaired. Of 130,084 assessed acres of wetlands, 99 percent
39 were impaired.

1 (b) (1) In honor of the federal Clean Water Act’s 50-year
2 anniversary, it is the intent of the Legislature in enacting this act
3 to recommit California to achieve the national goal to restore and
4 maintain the chemical, physical, and biological integrity of the
5 state’s waters by eliminating the discharge of pollutants into
6 impaired waterways.

7 (2) It is further the intent of the Legislature in enacting this act
8 to require that the State Water Resources Control Board and the
9 California regional water quality control boards meet the national
10 goal of achieving swimmable, fishable, and drinkable waters by
11 no later than January 1, 2050.

12 SEC. 2. Chapter 3.5 (commencing with Section 13150) is added
13 to Chapter 3 of Division 7 of the Water Code, to read:

14
15 CHAPTER 3.5. STATE WATERS IMPAIRMENT

16
17 13150. All California surface waters shall be fishable,
18 swimmable, and drinkable by January 1, 2050. To bring all water
19 segments into attainment with this requirement, the state board
20 and regional boards shall comply with the requirements of this
21 chapter.

22 13151. (a) The state board and regional boards shall not do
23 either of the following:

24 (1) Authorize an NPDES discharge that causes or contributes
25 to an exceedance of a water quality standard.

26 (2) Authorize an NPDES permit that uses an alternative
27 compliance determination, safe harbor “deemed in compliance”
28 term, or any other best management practice permit term to
29 authorize a discharge that causes or contributes to an exceedance
30 of a water quality standard in receiving waters.

31 (b) The state board and regional boards shall not do either of
32 the following:

33 (1) Authorize a permit that does not include monitoring
34 sufficient to demonstrate compliance with water quality standards
35 and, unless infeasible, that does not include end-of-discharge pipe
36 monitoring.

37 (2) Authorize a permit unless it establishes criteria for, and
38 requires, monitoring to evaluate compliance with water quality
39 standards.

1 (c) The state board and regional boards shall not do either of
2 the following:

3 (1) Authorize a waste discharge requirement or waiver of a
4 waste discharge requirement for a discharge that causes or
5 contributes to an exceedance of a water quality standard.

6 (2) Authorize a waste discharge requirement or waiver of a
7 waste discharge requirement that uses an alternative compliance
8 determination, safe harbor “deemed in compliance” term, or any
9 other best management practice permit term to authorize a
10 discharge that causes or contributes to an exceedance of a water
11 quality standard in receiving waters.

12 (d) The state board and regional boards shall not issue an
13 enforcement order pursuant to Chapter 12 (commencing with
14 Section 1825) of Part 2 of Division 2 or Article 1 (commencing
15 with Section 13300) of Chapter 5 that includes a compliance
16 schedule deadline that extends beyond January 1, 2030, to a
17 discharger for a discharge that is causing or contributing to an
18 exceedance of a water quality standard.

19 13152. (a) Notwithstanding Section 13242, on and after
20 January 1, 2030, a regional water quality control plan, including
21 the program of implementation, shall not include a schedule for
22 implementation for achieving a water quality standard that was
23 adopted in an approved regional water quality control plan as of
24 January 1, 2021. It is the intent of the Legislature in enacting this
25 requirement to ensure that all water quality standards in effect as
26 of January 1, 2021, are fully implemented and achieved by January
27 1, 2030.

28 (b) The state board and regional boards shall only include in a
29 regional water quality control plan a schedule for implementation
30 of a water quality standard that is adopted after January 1, 2021,
31 if all of the following conditions are met:

32 (1) The schedule for implementation of the water quality
33 standard is the shortest time necessary, and in no instance exceeds
34 five years.

35 (2) The schedule for implementation is necessary for the
36 permittee to undertake physical construction that is necessary to
37 achieve compliance with the water quality standard.

38 (3) The water quality standard is not substantially similar to a
39 water quality standard that was in effect as of January 1, 2021.

1 (c) An NPDES permit, waste discharge requirement, or waiver
2 of a waste discharge requirement shall not be renewed, reissued,
3 or modified to contain effluent limitations or conditions that are
4 less stringent than the comparable effluent limitations or conditions
5 in the previous permit, requirement, or waiver.

6 (d) The state board and regional boards shall not authorize an
7 NPDES permit, waste discharge requirement, or waiver of a waste
8 discharge requirement that does not include a complete
9 antidegradation analysis as set out in State Water Resources
10 Control Board Resolution No. 68-16 and Administrative Procedures
11 Update 90-004.

12 13153. (a) (1) By January 1, 2030, the state board and regional
13 boards shall develop an Impaired Waterways Enforcement Program
14 to enforce all remaining water quality standard violations pursuant
15 to Chapter 12 (commencing with Section 1825) of Part 2 of
16 Division 2 and Article 1 (commencing with Section 13300) of
17 Chapter 5 that are causing or contributing to an exceedance of a
18 water quality standard.

19 (2) An enforcement action taken pursuant to the program shall
20 result in sufficient penalties, conditions, and orders to ensure the
21 person subject to the enforcement action is no longer causing or
22 contributing to an exceedance of a water quality standard.

23 (3) A discharger shall remain liable for a violation of a water
24 quality standard until sampling at the point of discharge
25 demonstrates that the discharge is no longer causing or contributing
26 to the exceedance.

27 (4) Penalties obtained pursuant to the program shall be deposited
28 into the Waterway Attainment Penalty Subaccount, which is hereby
29 created in the Waterway Attainment Account. Moneys in the
30 subaccount shall be available for the state board to expend, upon
31 appropriation by the Legislature, for purposes of the program.

32 (b) (1) By January 1, 2040, to ensure any water segments
33 impaired by ongoing legacy pollutants and nonpoint source
34 pollution are brought into attainment with water quality standards,
35 the state board and regional boards shall evaluate the state's
36 remaining impaired waters using the most current integrated report.

37 (2) The state board and regional boards shall, by January 1,
38 2040, report to the Legislature in compliance with Section 9795
39 of the Government Code a plan to bring the final impaired water
40 segments into attainment by January 1, 2050.

1 (3) The requirement for submitting a report imposed under
2 paragraph (2) is inoperative on January 1, 2044, pursuant to Section
3 10231.5 of the Government Code.

4 (c) (1) The Waterway Attainment Account is hereby created
5 in the Waste Discharge Permit Fund. Moneys in the Waterway
6 Attainment Account shall be available for the state board to expend,
7 upon appropriation by the Legislature, to bring remaining impaired
8 water segments into attainment in accordance with the plan
9 submitted pursuant to paragraph (2) of subdivision (b), subject to
10 subdivision (d).

11 (2) (A) By January 1, 2040, subject to a future legislative act,
12 50 percent of the annual proceeds of the State Water Pollution
13 Cleanup and Abatement Account shall be annually transferred to
14 the Waterway Attainment Account.

15 (B) This paragraph shall become inoperative January 1, 2051,
16 or when all water segments are in attainment with water quality
17 standards, whichever comes first.

18 (d) Moneys in the Waterway Attainment Account shall be
19 expended by the state board, upon appropriation by the Legislature,
20 to bring impaired waterways into attainment with water quality
21 standards to the maximum extent possible. Moneys in the account
22 shall only be expended on the following:

23 (1) Restoration projects, including supplemental environmental
24 projects, that improve water quality.

25 (2) Best management practice research innovation and incentives
26 to encourage innovative best management practice implementation.

27 (3) Source control programs.

28 (4) Identifying nonfilers.

29 (5) Source identification of unknown sources of impairment.

30 (6) Enforcement actions that recover at least the amount of
31 funding originally expended, which shall be deposited into the
32 Waterway Attainment Account.

33 (e) The state board shall, upon appropriation by the Legislature,
34 expend 5 percent of the annual proceeds of the State Water
35 Pollution Cleanup and Abatement Account to fund the state board's
36 SWAMP - Clean Water Team Citizen Monitoring Program in
37 order to inform the integrated report.

38 13154. This chapter does not affect the process by which
39 voluntary agreements are entered into to assist in the

1 implementation of new water quality standards lawfully adopted
2 by the state board.

3 13155. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Best management practice” means a practice or set of
6 practices determined by the state board or a regional board for a
7 designated area to be the most effective feasible means of
8 preventing or reducing the generation of a specific type of nonpoint
9 source pollution, given technological, institutional, environmental,
10 and economic constraints.

11 (b) “Drinkable” applies to waters subject to a regional water
12 quality control plan and means that the waters are drinkable to the
13 extent required by the regional water quality control plan.

14 (c) “Integrated report” means the state report that includes the
15 list of impaired waters required pursuant to Section 303(d) of the
16 federal Clean Water Act (33 U.S.C. 1313(d)) and the water quality
17 assessment required pursuant to Section 305(b) of the federal Clean
18 Water Act (33 U.S.C. 1315(b)).

19 (d) “NPDES” means the national pollutant discharge elimination
20 system established in the federal Clean Water Act (33 U.S.C.A.
21 Sec. 1251 et seq.).

22 (e) “Regional board” means a California regional water quality
23 control board.

24 (f) “Regional water quality control plan” means a water quality
25 control plan developed pursuant to Section 13240.

26 (g) “State board” means the State Water Resources Control
27 Board.

28 (h) “State Water Pollution Cleanup and Abatement Account”
29 means the State Water Pollution Cleanup and Abatement Account
30 created pursuant to Section 13440.

31 (i) “Supplemental environmental project” means an
32 environmentally beneficial project that a person subject to an
33 enforcement action voluntarily agrees to undertake in settlement
34 of the action and to offset a portion of a civil penalty.

35 (j) “Waste Discharge Permit Fund” means the Waste Discharge
36 Permit Fund created pursuant to Section 13260.

37 (k) “Waterway Attainment Account” means the Waterway
38 Attainment Account created pursuant to paragraph (1) of
39 subdivision (c) of Section 13153.

- 1 *(l)* “Waterway Attainment Penalty Subaccount” means the
- 2 Waterway Attainment Penalty Subaccount created pursuant to
- 3 paragraph (4) of subdivision (a) of Section 13153.

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