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CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 747**

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**Introduced by Assembly Member Caballero**

February 15, 2017

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~~An act to add and repeal Chapter 3.2 (commencing with Section 7287.20) of Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation. An act to add Chapter 3.5 (commencing with Section 1110) to Part 1 of Division 2 of, the Water Code, relating to water.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 747, as amended, Caballero. ~~Taxation: nitrogen-based fertilizer application: County of Monterey. State Water Resources Control Board: Administrative Hearings Office.~~

*Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the executive director of the State Water Resources Control Board to issue a complaint to a person who violates certain use and diversion of water provisions and subjects the violator to administrative civil liability. Existing law also authorizes the board to issue an order to a person to cease and desist from violating, or threatening to violate,*

*certain requirements relating to water use, including diverting or using water, other than as authorized.*

*This bill would create within the board an Administrative Hearings Office composed of attorneys qualified to act as hearing officers in adjudicative proceedings involving water rights matters. The bill would require the office to preside over hearings on the following matters: a complaint subjecting a violator of certain water use and diversion provisions to administrative civil liability, a proposed cease and desist order for violating, or threatening to violate, certain requirements relating to water use, and a revocation of a permit or license to appropriate water. The bill would exclude from the office's purview a hearing that includes, in addition to any of those enumerated matters, consideration of a matter not enumerated. The bill would authorize the board to assign additional work to the office, as specified. The bill would prescribe procedures for hearings presided over by the office, including the adoption of a final order by the office for certain matters imposing administrative civil liability, and the preparation of a proposed order to be submitted for final review by the board for all other matters presided over by the office.*

~~Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions.~~

~~This bill would authorize the County of Monterey to impose a special tax or assessment until January 1, 2029, or until a statute creating a statewide program for the purpose of addressing water quality issues associated with groundwater-sourced drinking water is enacted, whichever is earlier, on the application, for any commercial purpose, of fertilizers containing any form or compound of nitrogen, if the board of supervisors of the county adopts an ordinance proposing the tax or assessment and the ordinance proposing the tax or assessment is approved by the voters, subject to applicable voter approval requirements, as specified. The bill would require that the tax or assessment be for the purposes of creating a short-term pilot program to provide replacement drinking water and, if a statute creating the statewide program is enacted, to cover implementation costs associated with the county's participation in that program.~~

~~This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Monterey.~~

~~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. Chapter 3.5 (commencing with Section 1110) is*  
2    *added to Part 1 of Division 2 of the Water Code, to read:*

3  
4    *CHAPTER 3.5. STATE WATER RESOURCES CONTROL BOARD*  
5    *ADMINISTRATIVE HEARINGS OFFICE*

6  
7    *1110. (a) There is within the board an Administrative Hearings*  
8    *Office. The board shall administer the Administrative Hearings*  
9    *Office as an independent organizational unit consistent with the*  
10   *role of the Administrative Hearings Office as a neutral, fair, and*  
11   *efficient forum for adjudications. The Administrative Hearings*  
12   *Office shall be overseen by a presiding hearing officer.*

13   *(b) The purpose of the Administrative Hearings Office is to*  
14   *provide qualified, impartial hearing officers, to ensure that water*  
15   *rights matters, including water-related cannabis enforcement*  
16   *matters, are resolved in a timely manner, and to provide the board*  
17   *flexibility to assign hearing officers to other matters, such as those*  
18   *involving water right change petitions and other matters*  
19   *concerning water right permits and licenses.*

20   *(c) The Administrative Hearings Office shall conduct*  
21   *adjudicative hearings pursuant to this chapter in accordance with*  
22   *Chapter 4.5 (commencing with Section 11400) of Part 1 of Division*  
23   *3 of Title 2 of the Government Code. Except as otherwise provided*  
24   *in Section 1113 or the regulations of the board, this section does*  
25   *not limit the discretion of the board where Chapter 4.5*  
26   *(commencing with Section 11400) of Part 1 of Division 3 of Title*  
27   *2 of the Government Code makes the applicability of a procedure*  
28   *or requirement discretionary.*

29   *1111. (a) The Administrative Hearings Office shall include*  
30   *attorneys qualified to act as hearing officers in adjudicative*  
31   *proceedings involving water right matters. The hearing officers*  
32   *shall have qualifications equivalent to those of administrative law*  
33   *judges and knowledge and experience in water law.*

34   *(b) The board shall designate a hearing officer to serve as the*  
35   *presiding hearing officer.*

36   *(c) The presiding hearing officer shall have authority to*  
37   *supervise the Administrative Hearings Office, including, but not*  
38   *limited to, the authority to do all of the following:*

1       (1) *Hire personnel, including technical experts.*

2       (2) *Assign matters to hearing officers.*

3       (3) *Reassign matters as convenience and necessity require.*

4       (4) *Serve as a hearing officer.*

5       1112. (a) *Except as provided in subdivision (b), a hearing*  
6 *officer from the Administrative Hearings Office shall preside over*  
7 *a hearing in any of the following matters:*

8       (1) *A complaint issued under Section 1055.*

9       (2) *A notice of a proposed cease and desist order issued under*  
10 *Section 1834.*

11       (3) *A notice of a revocation of a permit issued under Section*  
12 *1410 or revocation of a license issued under Section 1675.*

13       (b) *Subdivision (a) does not apply if the hearing notice includes,*  
14 *in addition to a proceeding under subdivision (a), consideration*  
15 *of a decision or order on a matter not subject to subdivision (a).*

16       (c) *In an adjudicative hearing presided over by the board or a*  
17 *board member, all of the following shall apply:*

18       (1) *Upon request by the board, a hearing officer from the*  
19 *Administrative Hearings Office shall assist the board or board*  
20 *member in conducting the hearing.*

21       (2) *The board may assign an adjudicative hearing, in whole or*  
22 *in part, to the Administrative Hearings Office.*

23       (3) *A hearing officer may perform additional work requested*  
24 *by the board, including, but not limited to, presiding over hearings*  
25 *on nonadjudicative matters, mediations, and overseeing*  
26 *investigations.*

27       (d) *A hearing officer may only perform the work specified in*  
28 *subdivision (c) if the additional work does not conflict with the*  
29 *officer's primary responsibility to serve as a hearing officer for*  
30 *matters listed in subdivision (a) and to resolve those matters in a*  
31 *timely manner.*

32       1113. *In accordance with subdivision (c) of Section 1110, the*  
33 *Administrative Adjudication Code of Ethics (Article 16*  
34 *(commencing with Section 11475) of Chapter 4.5 of Part 1 of*  
35 *Division 3 of Title 2 of the Government Code) shall apply to*  
36 *hearing officers of the Administrative Hearings Office.*

37       1114. (a) *Proposed and final orders in an adjudicative*  
38 *proceeding presided over by a hearing officer from the*  
39 *Administrative Hearings Office shall be prepared in accordance*  
40 *with this section.*

1       (b) In a proceeding presided over by a hearing officer for  
2 administrative civil liability under Section 1847 or 5107, both of  
3 the following shall apply:

4       (1) Within 90 days after the matter is submitted, the hearing  
5 officer shall adopt a final order that meets the requirements of  
6 Section 11425.50 of the Government Code. If the hearing officer  
7 finds that a delay is required by special circumstances, the hearing  
8 officer shall issue an order delaying the final order for no more  
9 than 30 days and specifying the reasons for the delay. Failure of  
10 the hearing officer to adopt a final order within the time required  
11 shall not prejudice the rights of any party in the case.

12       (2) A final order adopted under this subdivision is subject to  
13 review as provided in Chapter 4 (commencing with Section 1120).

14       (c) In a proceeding presided over by a hearing officer other  
15 than a proceeding under subdivision (b), all of the following apply:

16       (1) Within 90 days after the matter is submitted, the hearing  
17 officer shall prepare a proposed order in a form that meets the  
18 requirements of Section 11425.50 of the Government Code and  
19 may be adopted by the board as the final order in the case. If the  
20 hearing officer finds that a delay is required by special  
21 circumstances, the hearing officer shall issue an order delaying  
22 the proposed order for no more than 30 days and specifying the  
23 reasons for the delay. Failure of the hearing officer to deliver a  
24 proposed order within the time required shall not prejudice the  
25 rights of any party in the case. A copy of the proposed order shall  
26 be served on all parties to the proceeding and posted on the  
27 board's Internet Web site on the same day that it is provided to  
28 the board.

29       (2) Within 90 days after receipt of the hearing officer's proposed  
30 order, the board may do any of the following:

31           (A) Adopt the proposed order in its entirety.

32           (B) Reduce or otherwise mitigate the proposed administrative  
33 civil liability and adopt the balance of the proposed order.

34           (C) Make technical or other minor changes in the proposed  
35 order and adopt it as the board's order. Action under this  
36 subparagraph is limited to a clarifying change or a change of a  
37 similar nature that does not materially change the factual or legal  
38 basis of the proposed order.

39           (D) Reject the proposed order and remand the case to the same  
40 hearing officer if reasonably available, otherwise to another

1 hearing officer from the Administrative Hearings Office, for further  
2 proceedings. If the board remands the matter to a hearing officer  
3 pursuant to this subparagraph, the hearing officer shall prepare  
4 a revised proposed order, as provided in paragraph (1), based  
5 upon the record of the prior hearing and any additional evidence  
6 admitted in the proceeding. A copy of the revised proposed order  
7 shall be served on all parties to the proceeding and posted on the  
8 board's Internet Web site on the same day it is provided to the  
9 board. The board may remand a proceeding pursuant to this  
10 subparagraph only once.

11 (E) Reject the proposed order, and decide the case upon the  
12 record, including the transcript, or upon an agreed statement of  
13 the parties, with or without taking additional evidence. By  
14 stipulation of the parties, the board may decide the case upon the  
15 record without including the transcript. If the board acts pursuant  
16 to this subparagraph, all of the following provisions apply:

17 (i) The board shall make available a copy of the record to the  
18 parties and may require payment of fees covering only the direct  
19 costs of making the copy.

20 (ii) The board shall afford the parties the opportunity to present  
21 either oral or written argument before the board.

22 (iii) The authority of the board to decide a case pursuant to this  
23 subparagraph includes the authority to adopt portions of the  
24 hearing officer's recommended order, as provided in  
25 subparagraphs (A) to (C), inclusive, while deciding for itself the  
26 remaining issues in the case.

27 (iv) If the board elects to proceed under this subparagraph, the  
28 board shall issue its final order no later than 90 days after rejection  
29 of the proposed order, or no later than 90 days after its receipt of  
30 the transcript if the board has ordered a transcript of the  
31 proceedings before the hearing officer.

32 (v) If the board finds that further delay is required by special  
33 circumstances, the board shall issue an order delaying the issuance  
34 of its final order by no more than 30 days and specifying the  
35 reasons for that delay.

36 (3) After 90 days following receipt of the proposed order, if the  
37 board fails to act as prescribed in paragraph (2) or fails to issue  
38 a rejection under subparagraph (E) of paragraph (2), the proposed  
39 order shall be deemed adopted by the board.

1       (4) Within 30 days of receipt of the hearing officer's proposed  
2 order, any interested party may submit a written request to the  
3 board describing which of the actions authorized by paragraph  
4 (2) the party requests the board to take, including an explanation  
5 of the reasons for the party's request. The board shall consider  
6 all requests submitted pursuant to this paragraph when it acts on  
7 the hearing officer's proposed order.

8       (d) (1) The time limits for issuance of a proposed order and  
9 board action under this section do not apply to a proceeding that  
10 the hearing officer determines to be complex because it involves  
11 any of the following:

- (A) Novel and difficult legal or factual issues.
  - (B) A large number of parties.
  - (C) Numerous witnesses.
  - (D) A large amount of documentary evidence.
  - (E) Coordination with related proceedings.

17       (2) A proceeding is deemed to be complex if it is a reference  
18 from a court under Section 2000 or a statutory adjudication under  
19 Section 2525.

20       (3) If a hearing officer determines a proceeding to be complex,  
21 or a proceeding is deemed to be complex pursuant to paragraph  
22 (2), the hearing officer shall establish a hearing management plan  
23 and monitor the proceeding to ensure timely disposition.

24 SECTION 1. Chapter 3.2 (commencing with Section 7287.20)  
25 is added to Part 1.7 of Division 2 of the Revenue and Taxation  
26 Code, to read:

## **CHAPTER 3.2. COUNTY OF MONTEREY NITROGEN-BASED FERTILIZER APPLICATION TAX**

31      7287.20. (a) Notwithstanding any other law, in order to address  
32 the deleterious effects of nitrate contamination on groundwater  
33 sourced drinking water, the County of Monterey may, by ordinance,  
34 impose a special tax or assessment until January 1, 2029, on the  
35 application, for any commercial purpose, of fertilizers containing  
36 any form or compound of nitrogen if both of the following  
37 requirements are met:

(1) Upon approval by the Board of Supervisors of the County of Monterey, the ordinance proposing the special tax or assessment is subsequently submitted for review to the Secretary of the

1 Department of Food and Agriculture, who shall determine its  
2 consistency with this chapter by no later than 14 calendar days  
3 upon receipt of the approved ordinance.

4 (2) The approved ordinance is submitted to the voters for  
5 approval in accordance with Article XIII C of the California  
6 Constitution by no later than December 31, 2018.

7 (b) The purposes of the special tax or assessment shall be as  
8 follows:

9 (1) Creating a short-term pilot program to provide replacement  
10 drinking water to certain drinking water systems and to individual  
11 wells located in agricultural production areas that are impacted  
12 with nitrate levels above the maximum contaminant level.  
13 Replacement water may be provided by bottled water or a water  
14 treatment device that complies with Article 3 (commencing with  
15 Section 116825) of Chapter 5 of Part 12 of Division 104 of the  
16 Health and Safety Code.

17 (2) Covering implementation costs associated with the county's  
18 participation in the statewide program described in subdivision  
19 (f), if the statute creating the program is enacted as described in  
20 subdivision (f).

21 (e) The county may use proceeds from the special tax or  
22 assessment, not to exceed 10 percent of the total amount collected,  
23 for reasonable costs associated with the support, administration,  
24 and collection of the special tax or assessment and the  
25 implementation of the pilot program.

26 (d) Proceeds from the special tax or assessment in excess of  
27 amounts needed to satisfy the obligations specified in subdivisions  
28 (b) and (e) may be used to identify and assess the technological,  
29 regulatory, and economic feasibility of alternatives for long-term  
30 replacement water for nitrate-impacted drinking water sources in  
31 the Salinas basin.

32 (e) If the ordinance proposing the special tax or assessment is  
33 not approved as required in accordance with this chapter, then this  
34 chapter shall be repealed as of January 1, 2019.

35 (f) Notwithstanding subdivision (a), if a statute that is enacted  
36 on or after the effective date of this section, and before January 1,  
37 2029, creates a statewide program and funding source for the  
38 purpose of addressing water quality issues associated with  
39 groundwater-sourced drinking water, then the special tax or

1 assessment authorized by this chapter shall not be collected on or  
2 after the effective date of that statute.

3 (g) After collection of the special tax or assessment concludes,  
4 the county may continue to expend the remaining unused proceeds  
5 of the special tax or assessment, until the proceeds are exhausted,  
6 for either of the following:

7 (1) The purposes specified pursuant to paragraph (1) of  
8 subdivision (b) until the pilot program is dissolved and wound up  
9 and all obligations paid in full in accordance with the ordinance.

10 (2) The purposes described in paragraph (2) of subdivision (b).

11 SEC. 2. The Legislature finds and declares that a special statute  
12 is necessary and that a general statute cannot be made applicable  
13 within the meaning of Section 16 of Article IV of the California  
14 Constitution because of the necessity for the County of Monterey  
15 to have the statutory authority to place before its voters a local  
16 initiative for the purpose of creating the necessary infrastructure  
17 and initial funding for a temporary clean drinking water distribution  
18 program at the county level to begin delivering safe water to  
19 individual Salinas Valley water users whose drinking water  
20 contains high levels of nitrates.