
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

AB 3005 (Robert Rivas) - Leroy Anderson Dam and Reservoir: permitting, environmental review, and public contracting

Version: August 17, 2020

Urgency: Yes

Hearing Date: August 19, 2020

Policy Vote: N.R. & W. 8 - 0

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would authorize the Santa Clara Valley Water's Anderson Dam project to undergo a streamlined California Environmental Quality Act (CEQA) process in exchange for certain environmental requirements on the project.

Fiscal Impact:

- Unknown costs to the Department of Fish and Wildlife (DFW) and the State Water Resources Control Board (State Water Board) to implement this bill.
- The California Air Resources Board (ARB) estimates ongoing costs of \$192,000 annually (special fund) to perform the greenhouse gas (GHG) determinations required under this bill.

Background: The Leroy Anderson Dam is located in Santa Clara County near Morgan Hill. Owned and operated by the Santa Clara Valley Water District (SCVWD, aka Valley Water), it is a 235' tall earthfill dam that impounds up to 91,300 acre-feet of water. The Department of Water Resources (DWR) rates its downstream hazard as Extremely High. Under that hazard rating, the potential downstream impacts to life and property would be expected to cause loss of at least one human life and one of the following:

- result in an inundation area with a population of 1,000 or more; or,
- result in the inundation of facilities or infrastructure, the inundation of which poses a significant threat to public safety.

In January 2009, SCVWD released a preliminary seismic study that suggested a small chance that a 6.6 magnitude quake centered directly at Anderson Reservoir, or a 7.2 quake centered one mile away, could cause the reservoir's 240-foot-high earthen dam to fail. In response, SCVWD lowered the water level to 74 percent of capacity and announced further analysis of the situation, which could possibly result in retrofitting the dam if necessary.

In December 2016, SCVWD reported that additional geotechnical analysis indicated considerably more work would need to be performed on the dam, essentially, removing the dam completely and rebuilding it. The existing dam had been built on alluvial deposits, which could liquefy during an earthquake. Accordingly, the estimated cost rose to US\$400 million and the start of work was rescheduled to 2020, with completion planned for 2023–2024.

However, the Federal Energy Regulatory Commission (FERC) dismissed SCVWD's plans as insufficient to address the risk of catastrophic failure. In a letter dated February 24, 2020, FERC ordered the reservoir immediately be maintained at an

elevation that provides approximately 32,000 acre-feet of storage. Moreover, that beginning October 1, SCVWD would be required to begin draining Anderson Lake as quickly and safely as it can to “dead pool” (that level

Proposed Law:

This bill would:

- 1) Define the Anderson Dam project as:
 - a) Any activity or work of construction to retrofit, repair, replace, or improve the safety of the Leroy Anderson Dam and Reservoir, including any upstream or downstream construction, improvements, changes in operational activities, and flood protection measures that may be required to implement that activity or work.
 - b) The project includes any avoidance, minimization, or mitigation measures, including the Coyote Creek related Phase 1 measures of the Fish and Aquatic Habitat Collaborative Effort determined to be appropriate by the district, in consultation with state and federal agencies designated as “responsible agencies” and “trustee agencies” under CEQA.
- 2) Require CDFW to issue a lake and streambed alteration agreement, which includes reasonable measures necessary to protect the affected resource, for the Anderson Dam project within 180 days of receiving completed notification.
 - a) Provided SCVWD:
 - i) Submits a complete notification for the project.
 - ii) Completes and certifies the adequacy of environmental documentation required by CEQA for the activity in the notification.
 - b) The 180-day time period would not apply if CDFW and SCVWD mutually agree to an extension.
- 3) Require the SWRCB to issue project certification within 180 days after SCVWD does all of the following:
 - a) Files a complete application for project certification;
 - b) Files a complete application or petition for all water rights approvals necessary to implement the Anderson Dam project; and
 - c) Completes and certifies the adequacy of environmental documentation for the project certification required under CEQA.
- 4) Specify procedures and requirements that govern the determination of whether a project certification application is complete, and outlines a process whereby the SWRCB is to notify Valley Water of any deficiencies in submitted materials, but does not allow any extension or waiver of any of the specified time periods.
- 5) Authorize a state agency, board, commission, or department with the authority to issue permits that would authorize the project or project-related work to do the following:

- a) Enter into an agreement with SCVWD to recover costs for actions authorized by this section that are above the usual level of service provided by the state agency to expedite the review of environmental documents prepared under CEQA or permit processing and approval for the Anderson Dam project.

The goal is to comply with statutes regarding dams and dam safety, and complete permit review and approval in an expeditious manner.

- b) Hire or compensate staff or contract for services needed to achieve those goals.
- c) Work collaboratively with local, state, and federal agencies on an integrated regulatory approach.

This provision does not limit or expand the authority or discretion of a state agency with regards to processing a permit application, the issuance of a permit, or any conditions that may be required in conjunction with the issuance of a permit.

- 6) Authorize SCVWD to award contracts on a best value basis for any work of construction to retrofit, repair, or replace the Leroy Anderson Dam and Reservoir.
 - a) SCVWD would be required, if the board elects to award contracts on a best value basis, to comply with specified requirements governing the documents prepared setting forth the scope and estimated price of the project and the request for qualifications.
 - b) A best value contractor would be prohibited from being prequalified or shortlisted unless the contractor provides an enforceable commitment to the district that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project, in accordance with certain criteria.
- 7) Make legislative findings and declarations regarding:
 - a) The necessity of a special statute for the Santa Clara Valley Water District.
 - b) The importance of this bill.

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