
THIRD READING

Bill No: AB 3005
Author: Robert Rivas (D), et al.
Amended: 8/24/20 in Senate
Vote: 27 - Urgency

SENATE NATURAL RES. & WATER COMMITTEE: 8-0, 8/12/20
AYES: Monning, Jones, Allen, Borgeas, Caballero, Hertzberg, Hueso, Stern
NO VOTE RECORDED: Jackson

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/20/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

ASSEMBLY FLOOR: 78-0, 6/10/20 - See last page for vote

SUBJECT: Leroy Anderson Dam and Reservoir: permitting, and public contracting

SOURCE: Santa Clara Valley Water District

DIGEST: This bill authorizes the Santa Clara Valley Water District's (SCVWD) Anderson Dam project to receive expedited permitting and California Environmental Quality Act (CEQA) review, award contracts on a best value basis, and imposes additional environmental requirements on the project.

Senate Floor Amendments of 8/24/20 correct drafting errors, clarify ambiguous provision, and make other technical corrections to the bill.

ANALYSIS:

Existing law:

- 1) Authorizes the California Department of Fish and Wildlife (CDFW) to enter into Lake and Streambed Alteration Agreements, which permit activities that alter a streambed if reasonable measures to protect fish and wildlife resources are included.

- 2) Designates the State Water Resources Control Board (SWRCB) as the state water pollution control agency for purposes of the Federal Water Pollution Control Act and authorizes the SWRCB to issue a certificate or statement under the federal act that there is reasonable assurance that an activity of a person subject to the jurisdiction of the state board will not reduce water quality below applicable standards.
- 3) Requires, under CEQA, a lead agency with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA.
- 4) Establishes, under CEQA, administrative procedures for the review and certification of the EIR for a project and judicial review procedures for any action or proceeding brought to challenge the lead agency's decision to certify the EIR or to grant project approvals.
- 5) Authorizes certain local entities to select a bidder for a contract on the basis of "best value;" a process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications.
- 6) Governs various types of contract procedures applicable to the SCVWD, and prescribes competitive bidding procedures for any improvement or unit of work over \$50,000.

This bill:

- 1) Defines 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) Additionally, 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) Requires 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.
- 3) Requires 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) Specifies procedures and requirements that govern the determination of whether a project certification application is complete.
- 5) Requires state courts to apply Rules 3.2220 to 3.2237 of the California Rules of Court to any proceeding challenging an EIR for the Anderson Dam Project or the granting of any project approvals within 270 days of filing of the certified record of proceedings with the court. Also requires the Judicial Council to amend the California Rules of Court, as necessary, to implement this requirement, by or before October 1, 2021.
- 6) Establishes a schedule for issuing a draft EIR and the certification of the final EIR for the implementing measures set forth in a specific settlement agreement to benefit fisheries in the Stevens Creek and the Guadalupe River watersheds.
- 7) Authorizes a state agency, board, commission, or department with the authority to issue permits that would authorize the project or project-related work to, among other things, enter into an agreement with SCVWD to recover costs for actions 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.
- 8) Requires SCVWD, in conjunction with the State Water Resources Control board and others, to implement a new flow regime for the Guadalupe River and Stevens Creek. Known as FAHCE+, by October 15, 2020.
- 9) Requires SCVWD, by January 1, 2021, to engage and discuss with the Guadalupe River Corridor Restoration Management Team the development of a Guadalupe River Corridor restoration management plan, as provided.

- 10) Authorizes SCVWD to award contracts on a best value basis for any work of construction to retrofit, repair, or replace the Anderson Dam and Reservoir.
- 11) Makes legislative findings and declarations regarding:
 - a) The necessity of a special statute for SCVWD.
 - b) The importance of this bill.

Background

The Leroy Anderson Dam is located in Santa Clara County near Morgan Hill. Owned and operated by SCVWD, 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 result in an inundation area with a population of 1,000 or more or 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 dam to fail.

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.

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 in in a reservoir that cannot be drained by gravity through a dam's outlet works).

Comments

Precedent. DWR has rated the Leroy Anderson Dam as an extremely high hazard dam with a condition rating by DWR of "fair," (although that rating might change in the future). It is not the only extremely high hazard dam with a condition rating of fair in California. In addition to Anderson Dam, there are 28 other extremely high hazard dams with a condition rating by DWR of "fair" or lower, including

three other dams owned and operated by SCVWD: Almaden, Calero, and Guadalupe Dams. It seems reasonable to expect that, should this bill pass, there will be additional bills introduced in the future seeking similar accommodations.

Best Value Contracting. AB 3005 allows SCVWD to evaluate bids on portions of the Anderson Dam project using a ‘best-value’ basis, incorporating technical factors, such as qualifications, in addition to price. For example, it could award a contract based on consideration of objective criteria that include features, functions, lifecycle costs, experience, and past performance.

On the one hand, proponents argue that the Anderson Dam project is unique and therefore warrants unique authority. On the other hand, AB 3005 continues to unravel previous legislative efforts to harmonize the state’s contracting authorizations that had been scattered across sections of code.

Expedited Judicial Review. For a small handful of major projects, existing law provides that, to the extent feasible, courts must resolve CEQA challenges to those projects within 270 days of the filing of the record of administrative proceedings. These provisions were the subject of protracted policy deliberations over concerns regarding the burden on courts, access to justice for other litigants, and the sufficiency of environmental review.

The widespread application of expedited review arguably magnifies these concerns. Additionally, at some point, if the burden is too great, courts could fail to meet the 270-day deadline or even ignore it altogether. In fact, under separation of powers principles, the Legislature cannot constitutionally mandate that courts resolve cases on any particular timeframe.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Unknown costs to the CDFW and the SWRCB 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.

SUPPORT: (Verified 8/21/25)

Santa Clara Valley Water District (source)
Acterra
AFSCME Local 101

American Council of Engineering Companies of California
Association of California Water Agencies
Bay Area Council
California Chapters of the National Electrical Contractors Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Municipal Utilities Association
California Special Districts Association
Campbell Chamber of Commerce
Cities Association of Santa Clara County
City and County of San Francisco
City of Gilroy
City of Milpitas
City of Morgan Hill
City of Mountain View
City of San Jose
City of Santa Clara
City of Sunnyvale
County of Santa Clara
Cupertino Chamber of Commerce
Employees Association, American Federation of State, County & Municipal
Employees 101, Council 57
Gilroy Chamber of Commerce
Honorable Anna G. Eshoo, Member of Congress
Honorable Jimmy Panetta, Member of Congress
Honorable Ro Khanna, Member of Congress
Honorable Zoe Lofgren, Member of Congress
International Federation of Professional & Technical Engineers Local 21
LA Raza Roundtable De California
Midpeninsula Regional Open Space District
Milpitas Chamber of Commerce
Minority Business Consortium
Morgan Hill Chamber of Commerce
Mountain View Chamber of Commerce
Northern California Allied Trades
Professional & Technical Engineers, Local 21, IFPTE, AFL-CIO
San Francisco Public Utilities Commission
San Jose Water Company
San Jose/Silicon Valley Branch of the NAACP
Santa Clara & San Benito Counties Building & Construction Trades Council
Santa Clara Valley Open Space Authority

Save the Bay
Silicon Valley Black Chamber of Commerce
Silicon Valley Central Chamber of Commerce
Silicon Valley Leadership Group
Silicon Valley MEPS (Mechanical, Electrical, Plumbing and Sprinkler Fitters)
Southern California Glass Management Association
State Building & Construction Trades Council of California
Sunnyvale Silicon Valley Chamber of Commerce
United Contractors
Wall & Ceiling Alliance
Western Wall & Ceiling Contractors Association

OPPOSITION: (Verified 8/21/25)

Associated Builders and Contractors - Northern California Chapter
Associated Builders and Contractors - Southern California Chapter
California Judges Association
Guadalupe-Coyote Resource Conservation District
San Francisco Baykeeper
Western Electrical Contractors Association

ARGUMENTS IN SUPPORT: According to the author, “AB 3005 ... will facilitate the speedy and expert construction of the Anderson Dam Seismic Retrofit Project that will protect lives and property from Dam failure, reduce flood risk for downstream communities, and restore Anderson Reservoir’s supply of clean, safe drinking water for the region. The Leroy Anderson Dam and Reservoir, owned by [SCVWD], has been determined ... to be at risk of an uncontrolled release of water, caused by a large earthquake, that could inundate cities and rural areas from San Francisco Bay south to Monterey Bay, including much of Silicon Valley.”

“Local, state, and federal authorities all have a responsibility to ensure that Anderson Dam is made seismically safe in an efficient manner while still achieving the highest level of environmental protections. This project has stalled for too many years. AB 3005 will help ensure the State of California does its part to expedite this critical project while creating 5,400 well-paying jobs ...for the region.”

ARGUMENTS IN OPPOSITION: The California Judges Association (CJA) writes,

CJA’s concern rests only with the expedited judicial review that was unfortunately amended back into the bill. This is another attempt by the

Legislature to set a 270-day deadline for the review of decisions subject to CEQA. Such a restrictive timeline is problematic for several reasons.

First, the 270-day goal is unrealistic. Such challenges cannot be briefed and decided in two different courts in that time period.

Second, granting extraordinary calendar priority to these cases means that other litigants are pushed to the back of the line. This includes cases that the legislature has already decided should be given statutorily mandated calendar preference, such as criminal cases, juvenile cases, and civil cases in which a party is at risk of dying.

Finally, courts are charged with dispensing equal access to justice for each and every case on their dockets. A rule that creates a new entitlement to priority in the courts' dockets effectively picks winners and losers when it comes to access to justice.

The Western Electrical Contractors Association, and the Southern California Chapter of Associated Builders and Contractors oppose a provision in Assembly Bill 3005 "that creates a loophole for evading mandates in existing law."

This bill requires the use of a Skilled and Trained Workforce (STWF) on the project, but exempts projects covered by a project labor agreement (PLA). They believe that the use of an STWF, as defined in existing law, should apply to all construction of a particular type – not where it applies to some projects but not others, simply because of the existence of a PLA.

ASSEMBLY FLOOR: 78-0, 6/10/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Quirk

Prepared by: Dennis O'Connor / N.R. & W. / (916) 651-4116
8/25/20 15:24:52

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