

CONCURRENCE IN SENATE AMENDMENTS

AB 3005 (Robert Rivas)

As Amended August 24, 2020

2/3 vote. Urgency

SUMMARY:

This bill expedites permitting and contracting requirements in order to facilitate the replacement of the Leroy Anderson Dam and Reservoir (Anderson Dam). Specifically, this bill:

- 1) Defines the Anderson Dam project as any activity or work of construction to retrofit, repair, replace, or improve the safety of the Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District (Valley Water) and located in the County of Santa Clara, 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. Additionally, the project includes any required avoidance, minimization, or mitigation measures.
- 2) Requires the Department of Fish and Wildlife (DFW), to issue a final Lake and Streambed Alteration Agreement (LSAA) to Valley Water that includes reasonable measures necessary to protect the affected resource within 180 days of receipt of a LSAA notification from Valley Water and if other specified requirements have been met. Allows for an extension of the 180 day time period through a mutual agreement between the DFW and Valley Water.
- 3) Requires the State Water Resources Control Board (SWRCB) to issue project certification within 180 days after specified actions by Valley Water, and specifies procedures and requirements that govern the determination of whether a project certification application is complete.
- 4) Requires state courts to apply Rules 3.2220 to 3.2237 of the California Rules of Court to any proceeding challenging an environmental impact report (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.
- 5) 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.
- 6) Authorizes a state agency, board, commission, or department with permitting authority over the Anderson Dam project to take certain actions to expedite the permitting process for the project, including entering into an agreement with Valley Water for the recovery of certain costs.
- 7) Requires Valley Water, in conjunction with the SWRCB and others, to implement a new flow regime for the Guadalupe River and Stevens Creek by October 15, 2020.
- 8) Authorizes Valley Water, upon approval by its board of directors, to award contracts on a best value basis, as specified, for any work for the Anderson Dam project.

- 9) Prohibits a best value contractor 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. This prohibition does not apply if Valley Water or the contractor have entered into a project labor agreement (PLA).

The Senate Amendments:

Establish specified procedures for the administrative and judicial review of the environmental review and approvals granted for the Anderson Dam project; require that the project shall not result in any net additional greenhouse gas (GHG) emissions as determined by the Air Resources Board (CARB); require amenities to improve recreational opportunities at the project site; establish a schedule for the issuance of a draft EIR and the certification of the final EIR for the implementation of measures set forth in a specific settlement agreement to benefit fisheries in the Stevens Creek and the Guadalupe River watersheds, and require Valley Water to implement a new flow regime in the Guadalupe River and Steven Creek; add two severability clauses; and make other technical and conforming changes.

COMMENTS:

Leroy Anderson Dam and Reservoir. Anderson Dam is a large earthen dam located near Morgan Hill, California, that impounds Santa Clara County's largest surface water reservoir – Anderson Reservoir. The dam and reservoir are owned and operated by Valley Water, and the reservoir stores local rainwater runoff and imported water from the Central Valley Project. With a capacity of nearly 90,000 acre-feet, the reservoir is a part of the region's water supply system for drinking water and a water source for groundwater recharge projects.

Seismic Concerns. Experts estimate that a magnitude 7.25 earthquake on the Calaveras Fault centered less than 2 km (1.25 miles) from the dam, or a magnitude 6.6 earthquake on the Coyote Creek Fault centered beneath the dam, could significantly damage the dam embankment and lead to dam failure and the uncontrolled release of water. A catastrophic failure of the dam would impact thousands of people and property in Santa Clara, San Benito, Monterey, and Santa Cruz counties, with effects impacting the immediate vicinity, Silicon Valley, and the San Francisco Bay and Monterey Bay areas.

Anderson Dam is currently operated at a restricted level due to these seismic concerns. However, because the dam outlet is too small, the seismic restriction to keep the reservoir at reduced capacity cannot always be met. On February 20, 2020, the Federal Energy Regulatory Commission (FERC) ordered Valley Water to begin draining the reservoir by October 1, 2020 to deadpool – the level at which water in the reservoir cannot be drained by gravity through the dam's outlet – and to construct a low level outlet tunnel as soon as possible.

Anderson Dam Reconstruction Plans. The Anderson Dam Seismic Retrofit Project was initiated in 2012 and is estimated to cost \$576 million. The project will remove most of the existing earthen dam and replace it. The new dam will be constructed to modern seismic and dam safety standards, including increased capacities for the spillway and outlet to allow a rapid, controlled draw down in an emergency. These features are intended to increase dam safety and incidental flood protection.

This bill seeks to expedite permitting and contracting requirements in order to facilitate the Anderson Dam project. Other recent large dam retrofits have not sought the same expedited processes that would be required by this bill.

Expedited Judicial Review. For a small handful of major projects, existing law provides that, to the extent feasible, courts must resolve California Environmental Quality Act (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.

According to the Author:

AB 3005, The Expedited Dam Safety for Silicon Valley Act, 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. 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 Support:

Those in support argue that this bill is primarily related to public safety and helps ensure the state does its part to expeditiously eliminate the risk of a devastating loss of life, property, and thousands of job-creating Silicon Valley businesses from the potential failure of the Anderson Dam.

Arguments in Opposition:

Those in opposition argue that a restrictive 270-day deadline for the review of decisions subject to CEQA is problematic. Others argue that the use of a Skilled and Trained Workforce, as defined in existing law, should apply to all construction of a particular type – not to some projects but not others, simply because of the existence of a project labor agreement.

FISCAL COMMENTS:

According to the Senate Appropriations Committee, there are unknown costs to the DFW and the SWRCB to implement this bill. CARB estimates ongoing costs of \$192,000 annually (special fund) to perform the GHG determinations required under this bill.

VOTES:

ASM WATER, PARKS, AND WILDLIFE: 14-0-0

YES: Eduardo Garcia, Megan Dahle, Bigelow, Flora, Chu, Friedman, Cristina Garcia, Gloria, Kalra, Levine, Mathis, Blanca Rubio, Salas, Wood

ASM APPROPRIATIONS: 18-0-0

YES: Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

ASSEMBLY FLOOR: 78-0-1

YES: 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, O'Donnell, Obernolte, 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

ABS, ABST OR NV: Quirk

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Jones

UPDATED:

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