

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 2895 (Arambula) – As Amended March 17, 2022

SUBJECT: Water: permits and licenses: temporary changes: water or water rights transfers

SUMMARY: Revises the State Water Resources Control Board's (State Water Board) process for consideration and approval of a petition to temporarily change a water right to effectuate a short-term water transfer (i.e., for a period of one year or less). Specifically, **this bill:**

- 1) Requires a petition for a temporary change to include documentation of consultation with the Department of Fish and Wildlife (DFW) regarding the proposed temporary change.
- 2) Repeals a requirement that a petitioner for a temporary change publish a notice of the petition in a newspaper.
- 3) Provides that a petitioner for a temporary change shall notify water right holders potentially affected by said temporary change by a date specified by the State Water Board (rather than within ten days of submitting a petition per existing law).
- 4) Provides that the State Water Board shall commence an investigation of a proposed temporary change after receipt of a complete petition (rather than within ten days of receipt of a petition per existing law).
- 5) Repeals a requirement that the State Water Board issue a decision on a petition for temporary change within 35 days (or 55 days if comments are filed) of receiving the petition.
- 6) Permits a water right holder to submit a notice of a petition for temporary change to the State Water Board by January 31st of the year in which the transfer would be initiated. The notice of a petition for temporary change indicates that a water right holder may subsequently submit a petition for a temporary change. The notice of a petition for temporary change shall include the following information:
 - a) The water right for which the temporary change may be proposed;
 - b) The method by which the water may be made available for the transfer (i.e., reduction in direct diversion or transfer of stored or conserved water); and
 - c) An email address so that interested parties or the State Water Board may request additional information regarding the potential temporary change.
- 7) Requires the State Water Board to post all complete notices of a petition for temporary change it receives by January 31st (per #6, above) on its internet website and disseminate via email LISTSERV by February 15th.
- 8) Permits an interested party to request by March 1st that it be notified of a petition for temporary change related to a given water right by providing the State Water Board with its contact information and stating its concerns regarding the temporary change's effects on

other legal users, fish, wildlife, instream beneficial uses, or groundwater conditions that the interested party may raise in formal comments on the petition for temporary change.

- 9) Requires a petition for temporary change for which a notice of a petition for temporary change is submitted to describe efforts made, or approval conditions developed, to resolve potential concerns related to a temporary change raised by an interested party per #8, above.
- 10) Requires the State Water Board to issue a decision on a petition for temporary change within 35 days if it has received a notice of a petition for temporary change by January 31st (per #6, above). The State Water Board may extend its deadline to issue a decision by 20 days to address any comments submitted by interested parties or for good cause. The State Water Board may further extend its deadline to issue a decision if it receives the consent of the petitioner.
- 11) Clarifies that a water right holder may propose a temporary transfer to benefit the environment or recreational uses.
- 12) Defines “transfer” as an exchange of water or water rights for the purposes of this bill.
- 13) Makes technical and conforming changes.

EXISTING LAW:

- 1) Defines “temporary change” as any change in a water right’s point of diversion, place of use, or purpose of use to facilitate a transfer of water for one year or less (Water Code § 1728).
- 2) Permits a water right holder to petition for a temporary change (to facilitate a short-term water transfer) if the transfer involves only water that would otherwise be used or stored by the water right holder and the transfer does not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses (Water Code § 1725).
- 3) Specifies the content of a petition for a temporary change and establishes a process for review of the petition by interested parties and the State Water Board. The process for a petition for a temporary change is as follows (Water Codes § 1726 *et seq.*):
 - a) Petitioner submits petition for temporary change to State Water Board;
 - b) Petitioner publishes a notice of the petition in a newspaper of general circulation and notifies other water right holders (list provided by State Water Board) who may be affected by the transfer within ten days of its submission;
 - c) State Water Board posts notice of petition on its Internet Web site within ten days of its submission;
 - d) State Water Board commences investigation of petition within ten days of its submission;
 - e) Water users potentially affected by the transfer and other interested parties must file written comments on the petition within 30 days of its submission;
 - f) State Water Board must render a decision on petition within 35 days after commencing investigation of petition (i.e., within 45 days of its submission);

- g) State Water Board may extend date of its decision regarding petition by 20 days if comments on the petition are filed or for any other good cause; and
 - h) State Water Board may extend date of its decision (i.e., beyond 65 days) to complete investigation of or hold a hearing on the petition if the State Water Board receives the consent of the petitioner.
- 4) Specifies standard of review the State Water Board must adhere to in reviewing a petition (Water Code § 1727).
 - 5) Exempts a petition for a temporary change from the California Environmental Quality Act (Water Code § 1729).
 - 6) Provides for a long-term water transfer (for a period in excess of one year) if the transfer will not injure any legal user of water and would not unreasonably affect fish, wildlife, or other instream uses (Water Code § 1735).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** The author points to the way in which climate change is affecting California's water supplies and the need to sustainably manage groundwater as reasons why water transfers will become increasingly common in the future. The author asserts that "efficient review and approval by the State Water Board are needed to ensure that water transfers can be successfully executed." Despite this need, the author argues that the current process for review of short-term water transfers is inefficient and can result in delay and that improvement in this process is needed. The author maintains that "[this bill] will allow California to adapt to evolving drought conditions more effectively by modernizing and streamlining the water transfer petition process" and that it "improves communication between impacted agencies and individuals as well as increases accessibility of transfer petition information by the public."
- 2) **Background.** Water transfers involve the exchange between a water right holder with surplus water and a party that needs additional water. According to the State Water Board's draft "Guide to Water Transfers" (July 1999), "water transfers are a permanent and necessary part of California's water picture. State law supports voluntary transfers, and directs state agencies to encourage and facilitate voluntary transfers in a manner that protects existing water uses including providing technical assistance to implement water conservation measures which will make additional water available for transfers." Water transfers can come in various forms and durations; California law recognizes four types of water transfer that are each governed by a different set of rules: 1) temporary urgency change (180 days or less); 2) permanent change; 3) temporary change (one year or less); and 4) long-term transfer (greater than one year). This bill addresses the third type, a temporary change or short-term water transfer.

The process to apply and receive approval for a "temporary change" is outlined under "Existing Law," above. Notably, the current process requires the State Water Board to issue a decision on a petition for a temporary change within 65 days. This timeline can pose an administrative burden on the State Water Board and divert staff resources away from other

priorities if several petitions are filed within a short time frame; on the other hand this 65-day time period provides certainty for the parties involved in a water transfer, one of which may have a pressing need for the additional water proposed for transfer. Per the draft “Guide to Water Transfers” (July 1999), “many short-term transfers need rapid approval because they take advantage of specific water supply or water needs that develop in a given year and can be transient in nature.”

2021, California’s second driest year on record, was a busy year for petitions for short-term water transfers. The State Water Board received 18 petitions for the short-term transfer of 926,858 acre-feet (AF) of water; the State Water Board ultimately approved 12 of these petitions that allowed for the transfer of 761,560 AF of water. It is clear that the spring was the busiest period (which makes sense given the rapidly deteriorating hydrologic conditions in 2021): one petition in January, two in March, three in April, six in May, two in June, one in July, one in August, and two in November. Table 1 shows data on temporary change petitions (under Water Code § 1725) received by the State Water Board over past ten years.

Year	# of petitions	Amount of water requested for transfer (AF)	# of petitions approved	Amount of water approved for transfer (AF)
2021	18	926,858	11	761,560
2020	18	627,515	16	600,515
2019	6	556,039	6	537,283
2018	18	647,409	17	604,322
2017	5	546,724	4	451,344
2016	4	419,322	4	371,402
2015	11	389,088	9	376,760
2014	13	411,922	11	378,688
2013	15	302,823	15	302,823
2012	3	162,320	3	55,920
2011	5	27,800	5	27,800

Table 1. Temporary change petitions received by the State Water Board since 2011 (data obtained from State Water Board web site, April 18, 2022)

- 3) **Arguments in support.** Sustainable Conservation supports this bill asserting that water transfers are an important tool and are necessary so that water managers can adapt to a changed climate that is causing more frequent and intense droughts and a reduction in snowpack. Sustainable Conservation argues this bill will modernize the water transfer process to reflect the digital era and encourage more coordination between state agencies and the parties involved in a transfer.
- 4) **Arguments in opposition.** The Association of California Water Agencies (ACWA) has an “oppose unless amended” position on this bill. ACWA asserts the current short-term water transfer approval process is “generally a very good and expeditious process for water suppliers.” ACWA supports some of the changes proposed by this bill (e.g., deletion of the antiquated requirement that petitions be noticed in a newspaper), but is concerned with other changes, contending that “instead of streamlining the process [this] bill may be inadvertently making it more difficult to make these critical transfers.” In particular, ACWA has

reservations regarding this bill's deletion of the current 65-day time period for review and determination on a petition for which a notice has not been submitted to the State Water Board by January 31st.

5) **Suggested committee amendments.** This bill attempts to create an incentive for water right holders to more proactively consider whether or not they will seek a short-term water transfer. In doing so, this bill removes the 65 day timeline under existing law for short-term transfers that do not take advantage of the pre-notice process this bill will establish. This will create uncertainty for water right holders that do not meet the pre-notice deadline of January 31st and create hardship for recipients of transferred water, some of whom may have an urgent need for the transferred water. *To address this, the committee may wish to consider re-instating deadlines in this bill for short-term water transfers that are not pre-noticed as follows:*

- Within 15 days of petition submittal, petitioner will send notice to water right holders potentially affected by temporary change;
- Within 15 days of petition submittal, State Water Board will post notice of petition on its internet website;
- Within 15 days of petition submittal, State Water Board shall commence investigation of proposed temporary change;
- Within 55 days of commencing its investigation of the petition, the State Water Board shall render a decision on the petition; the decision shall be in accordance with substantive standards set forth in Water Code § 1728 and the State Water Board shall explain its decision in writing and submit to the petitioner, DFW, counties where transfer originates and terminates, transferee, and parties that comment on the petition;
- Permit State Water Board to extend date of decision by 20 days with consent of petitioner; and
- Permit State Water Board to further extend decision if it determines a hearing on the petition is necessary.

6) **Related legislation.** AB 2909 (Levine), 2015-16 Session, would have required the State Water Board to develop an expedited 30-day review process for approval of petitions for a temporary change for a reoccurring water transfer or an environmentally beneficial transfer. AB 2909 died in the Senate Appropriations Committee.

AB 2304 (Levine), 2015-16 Session, would have established the California Water Market Exchange in the Natural Resources Agency to create a centralized water market platform. AB 2304 died in the Assembly Appropriations Committee.

AB 982 (Costa), Chapter 1145, Statutes of 1988, establishes the current process for short- and long-term water transfers.

REGISTERED SUPPORT / OPPOSITION:

Support

Sustainable Conservation

Opposition

Association of California Water Agencies (unless amended)

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