

## ASSEMBLY THIRD READING

AB 2895 (Arambula)

As Amended April 27, 2022

Majority vote

**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).

**Major Provisions**

- 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) Requires a petitioner for a temporary change to notify water right holders potentially affected by the temporary change within 15 days of submitting a petition (rather than 10 days under existing law). Requires the State Water Board to post the notice of petition on its website and commence an investigation of the proposed temporary change within 15 days of petition submittal (rather than 10 days under existing law).
- 4) Requires the State Water Board to issue a decision on a petition for temporary change within 55 days of receiving the petition (rather than 35 days under existing law), unless the State Water Board determines that a hearing is necessary, and requires the State Water Board to explain its decision in writing, as specified. Permits the State Water Board to further extend the time for a decision for up to 20 days if specified conditions are met.
- 5) 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.
- 6) Requires the State Water Board to post all complete notices of a petition for temporary change it receives by January 31st (per #5, above) on its internet website and disseminate via email LISTSERV by February 15th.
- 7) 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.

- 8) 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 5), 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.

## COMMENTS

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 current process for a temporary change 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."

This bill extends the timeline by which the State Water Board must issue a decision on a short-term water transfer from 65 days to up to 90 days; however, for proposed short-term transfers that take advantage of the pre-notice process established by this bill (under which a petitioner submits notice by January 31<sup>st</sup>), the timeline for the State Water Board to issue a decision shall be no longer than 65 days. The goal is to create an incentive for water right holders to signal earlier in the season their intent to make water available for a transfer thereby creating greater certainty for parties that may receive, or be affected by, a transfer while allowing the State Water Board to better anticipate its workload.

### **According to the Author**

Due to the way that climate change is affecting California's water supplies and the need to sustainably manage groundwater, 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."

### **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.

### **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 "these changes, while well attended, may take a good process and make it overly burdensome, less efficient, and more costly."

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee, this bill will have the following fiscal impacts:

- 1) DFW anticipates the implementation of this bill will require four new positions and an estimated cost of \$450,000 in fiscal year 2022-23 and \$931,000 in 2023-24 and ongoing (General Fund). DFW expects an increase in workload because of the requirement in this bill for DFW to consult with each permittee or licensee who submits a petition for a short-term water transfer. The consultation process would include project site visits; evaluations of new and existing ecosystem, species and streamflow information; coordination with other state and federal agencies, the petitioner and other relevant entities; developing recommendations to mitigate potential harm to fish and wildlife resources; and other tasks.
- 2) Minor and absorbable costs to the State Water Board.

## **VOTES**

### **ASM WATER, PARKS, AND WILDLIFE: 11-0-4**

**YES:** Nazarian, Bennett, Friedman, Cristina Garcia, Kalra, Levine, Muratsuchi, Blanca Rubio, Salas, Villapudua, Ward

**ABS, ABST OR NV:** Megan Dahle, Bigelow, Nguyen, Smith

### **ASM APPROPRIATIONS: 12-2-2**

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Megan Dahle, Davies

**ABS, ABST OR NV:** Bigelow, Fong

**UPDATED**

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