
THIRD READING

Bill No: AB 2895
Author: Arambula (D)
Amended: 6/23/22 in Senate
Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE: 7-0, 6/20/22
AYES: Stern, Jones, Allen, Eggman, Hertzberg, Hueso, Laird
NO VOTE RECORDED: Grove, Limón

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 50-19, 5/26/22 - See last page for vote

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

SOURCE: Author

DIGEST: This bill revises the State Water Resources Control Board's (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).

ANALYSIS: Existing law establishes the water board as the administrator the state's water rights program, under which the board grants permits and licenses to appropriate water. (Water Code (WC) §§1200 et seq.) These provisions of the Water Code:

- 1) Authorize a permittee or licensee to temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would:
 - a) Only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change,

- b) Not injure any legal user of the water, and would
 - c) Not unreasonably affect fish, wildlife, or other instream beneficial uses.
(WC §1725)
- 2) Prescribe the process for a permittee or licensee to petition the water board for a temporary change due to a transfer or exchange of water rights, and imposes on the board related notice, decision, and hearing requirements. (WC §1726)
- a) Under that process, a petitioner is required, among other things, to:
 - i) Provide a copy of the petition to the Department of Fish and Wildlife (DFW), the board of supervisors of the county or counties in which the petitioner currently stores or uses the water subject to the petition, and the board of supervisors of the county or counties to which the water is proposed to be transferred. (WC §1726(c))
 - ii) Publish notice of a petition in a newspaper. (WC §1726(d))
 - b) Under that process the water board, with certain exceptions, is require to render a decision not more than 35 days after the date the investigation began or the date the notice was published. (WC §1726(g))
 - i) If the water board or the petitioner determines that an additional extension of time for a decision is necessary for the board to make the required findings, or that a hearing is necessary for the board to make those findings, the board may extend the time for a decision with the consent of the petitioner.
 - ii) If the petitioner agrees to a hearing, the water board shall identify the issues for which additional evidence is required and shall fix a time and place for the hearing.
- 3) Authorize a person entitled to the use of water to petition the water board for a change to a water right for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation and authorizes the board to approve the petition only if certain requirements are met. (WC §1707) Further authorizes that petition to be submitted in accordance with specified requirements, including those regulating temporary changes due to a transfer or exchange of water rights.

This bill:

- 1) Revises and recasts the provisions regulating temporary changes due to a transfer or exchange of water rights, including,
 - a) Eliminating the requirement that a petitioner publish notice of a petition in a newspaper.
 - b) Specifying that those provisions apply to a person who proposes a temporary change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation.
 - c) Making other technical and conforming changes.
- 2) Establishes a new process for petitions for which notice is submitted to the water board no later than January 31 for a temporary change due to a transfer or exchange of water rights initiated in the same year, and would impose on the board related notice, decision, and hearing requirements.
 - a) Under this new process, the water board would be required, among other things, to post on its internet website and disseminate by email LISTSERV by February 15 of each year a list of all timely and complete notices for which notice is filed.
 - b) By March 1 of each year, an interested person would be able to request notice of a submitted petition for temporary change, and the concerns related to effects on other legal users, fish, wildlife, instream beneficial uses, or groundwater conditions the person may raise in comments on the petition.
 - c) After submittal of a complete petition, the water board would be required to provide notice of the petition by sending a copy to all persons who submitted complete requests under subdivision (d), posting the petition on its internet website, and disseminating the petition by email LISTSERV. Any interested party may file a written comment on the petition not later than 30 days after submittal of a complete petition.
 - d) The water board would be required to issue a decision within 35 days after submittal of a complete petition for which notice is provided under these provisions, with certain exceptions.

Comments

Notice by Publication. While most water agencies appreciate the elimination of newspaper notice, the California News Publishers Association does not. That said, newspapers, especially paper newspapers, are much rarer than they used to be. Since the notice is going on the water board's website, that's a much more reliable source of information than a notice in the paper. This is especially true in a location where there are may still be multiple papers, so an interested person would have to scour all the papers on a daily basis for water notices instead of just checking online.

Not Clear Many Will Use the New Process. This new process will require water rights holders to notify the water board by January 31 that they have water they are willing to transfer. Things can change a lot between January 31 and the end of the traditional rain and snow season. As evidenced by this year, what at first looks like is going to be a wet year can quickly change. Nonetheless, there is probably no harm in setting up this new process.

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

SUPPORT: (Verified 8/3/22)

Sustainable Conservation

OPPOSITION: (Verified 8/3/22)

California News Publishers Association

ARGUMENTS IN SUPPORT: According to the author, "As California's climate becomes more extreme, water transfers are effective means to provide drought resiliency throughout the state. Efficient review and approval by the State Water Board are needed to ensure that water transfers can be successfully executed. Unfortunately, current requirements for processing temporary transfer petitions cause delays both for the petitioner and Water Board. AB 2895 will allow California to adapt to evolving drought conditions more effectively by modernizing and streamlining the water transfer petition process. This bill also improves communication between impacted agencies and increases accessibility of transfer petition information by the public."

ARGUMENTS IN OPPOSITION: The California News Publishers Association writes, "AB 2895 sets a dangerous precedent by dismissing a public notice statutory scheme in effect since 1943 and today spans more than 1,700 sections of code. The term 'newspaper of general circulation' is a term of art that applies only

to printed publications that have been legally deemed to distribute substantially to subscribers in the area.

“Newspapers of general circulation remain the most effective means to convey public notices because they are legally deemed to reach a “substantial” number of readers in the area. To pass a bill with language that indicates there could be a newspaper of general circulation online would open the door to changes in this entire statutory scheme informing the public of important information since 1943.”

ASSEMBLY FLOOR: 50-19, 5/26/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Chen, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Mathis, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Berman, Choi, Cooper, Daly, Grayson, Lackey, Mayes, O'Donnell, Villapudua

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