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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair

2021 - 2022 Regular

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**Bill No:** SB 489 **Hearing Date:** 8/16/22  
**Author:** Laird  
**Version:** June 13, 2022 Amended  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Dennis O'Connor

**Subject:** Flood management projects: state funding: Pajaro River Flood Risk Management Project

## BACKGROUND AND EXISTING LAW

- 1) Authorizes the state, under the State Water Resources Law of 1945, to participate in funding local flood control projects that are authorized by the legislature and that meet specific criteria: Chiefly, the project qualifies for federal financial assistance and is authorized by Congress. Projects may be authorized pursuant to a U.S. Army Corps of Engineers (USACE) Chief Engineer's report, but cannot receive state funding until authorized by Congress. (Water Code §12582.7)

Additional criteria include things such as the project provides protection from flood damages in the most efficient manner practicable, the project considers environmental, recreational, and local economic conditions, the annual benefits exceed the annual costs, project avoids, minimizes, or mitigates impacts to environmental and recreational values, etc.

- 2) Establishes the federal cost share of a project in the Chief Engineers report, based of federal law.
- 3) Establishes the state's cost share generally as 50% of the following (WC §12585.7):
  - a) The nonfederal capital costs of the flood control project;
  - b) The nonfederal capital costs of fish, wildlife, and recreation mitigation; and
  - c) The nonfederal planning, design, and engineering costs.
- 4) Allows the state's share of the nonfederal capital costs to be increased an additional 20%, to a maximum of 70%, upon the recommendation of the Department of Water Resources (DWR) if it determines that the project will result in a significant contribution to one or more specified objectives:
- 5) Establishes in regulation the method of making those determinations and calculating the associated increase in state cost share. (23 CCR § 572)
- 6) Authorizes state participation in "the project for flood control on the Pajaro River in the Counties of Monterey and Santa Cruz, authorized by the Flood Control Act of 1966 (Public Law 89-789), that is substantially in accordance with the recommendations of the Chief of Engineers of the United States Army Corps of Engineers in House Document 491, 89th Congress." (WC 12687.5)

- 7) Authorizes, pursuant to SB 496 (Laird, Stat. 2021, Ch. 310), the state to provide up to 100% of the costs to the Counties of Monterey and Santa Cruz, or to local agencies in those counties, for the project for flood control on the Pajaro River in the Counties of Monterey and Santa Cruz, upon finding both of the following:
- a) The project qualifies for greater than a 100 percent state cost share based upon the gross calculation of the cumulative benefits the project provides as described in a nonfederal cost share report submitted to the department for the project.
  - b) The project spans more than one county, contains significant state assets, and widespread economic hardship exists throughout the benefit area of the project, as demonstrated in a nonfederal cost share report submitted to the department for the project, and the project would aid in the restoration of a groundwater aquifer.

## PROPOSED LAW

This bill would:

- 1) Authorize the state to advance funds for planning, engineering, designing, and constructing the flood control project, as well as for the acquisition of required lands, easements, rights-of-way, and utility relocations, among other purposes for the Pajaro River in the Counties of Monterey and Santa Cruz.
- 2) Grant the state discretion to reduce the cost-share for the flood control project to 0%.
- 3) Revise the limitation on the amount of state funding provided in the absence of federal funding by instead authorizing the state to advance funding in the absence, in whole or in part, of federal funding, in an amount that does not exceed the amount that would be the equivalent nonfederal share if there was federal project funding.
- 4) Make legislative findings and declarations as to the necessity of a special statute for the Counties of Monterey and Santa Cruz.

## ARGUMENTS IN SUPPORT

According to the author, “Last year, the Legislature determined under SB 496 (Laird, 2021) that the State of California may fund up to 100% of the non-federal costs for the Pajaro River Flood Risk Management Project. This project would serve to protect the severely disadvantaged communities of Watsonville and Pajaro who have faced repeated floods due to inadequate levels of flood protection along the Pajaro River system.

The Pajaro Project will soon be fully funded with the recent passage of the voter-approved benefit assessment in South Santa Cruz County in addition to the assistance provided by the state and federal governments. SB 489 provides the final piece, ensuring that the state may advance funding to the Pajaro Regional Flood Management Agency for the initial stages of activity so this essential project can move forward.”

**ARGUMENTS IN OPPOSITION:** None received

**COMMENTS**

Advanced Payment. Historically, this committee has been reluctant to grant agencies the authority to advance payment for projects, or to provide a waiver of matching requirements, without adding a large number of conditions. Also, in those cases, the advance payment or waiving of a match were attached to specific programs and for specific purposes. See, for example, AB 2064 (Gloria, 2018) and AB 2060 (Eduardo Garcia, 2018). Both bills were subsequently vetoed by Governor Brown, both veto statements concluding “the additional financial risks and administrative costs associated with advanced payments, as proposed [by this bill], are unwarranted.”

More recently, on 6/28/22, this committee amended AB 1902 (Aguiar-Curry) to, among other things, delete provisions that would have granted the director of the Department of Conservation broad authorities to provide advance payment for any grant or loan to any Resource Conservation District.

State grant and subvention programs operate on a reimbursement basis to ensure the state does not pay for any unauthorized expenditures or uses of the funds. This is especially a concern with bond funds. The challenge of advance payment is there may be no effective way to recover any misspent funds.

Camel’s Nose. The issues on the Pajaro River may be unique. Nonetheless, between the waiving of the local match requirement provided by SB 496 (Laird, Stat. 2021, Ch. 310), and the advance payment provisions of this bill, it seems likely that future bills will cite these bills as precedent for similarly waiving matching rates and providing advance payment.

**SUGGESTED AMENDMENTS:** None

**SUPPORT**

California Farm Bureau  
 California Farm Bureau Federation  
 Community Action Board of Santa Cruz County, INC.  
 Grower-shipper Association of Central California  
 Monterey County Farm Bureau  
 Monterey County Water Resources Agency  
 Monterey; County of  
 Pajaro River Watershed Flood Prevention Authority  
 Pajaro Valley Chamber of Commerce and Agriculture  
 Pajaro Valley Prevention and Student Assistance, INC.  
 Pajaro Valley Water Management Agency  
 Santa Cruz County Farm Bureau  
 Together in Pajaro  
 Watsonville Wetlands Watch  
 Watsonville, City of

**OPPOSITION**

None Received