
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 23 (Caballero) - Water supply and flood risk reduction projects: expedited permitting

Version: May 1, 2023

Urgency: No

Hearing Date: May 15, 2023

Policy Vote: N.R. & W. 10 - 0, E.Q. 7 - 0

Mandate: No

Consultant: Ashley Ames

Bill Summary: This bill would require the State Water Resources Control Board (SWRCB) and regional water quality boards to use an approved regional habitat conservation plan or natural communities conservation plan, as specified, as a watershed plan for aquatic resources, as specified. It would also require the Department of Fish and Wildlife (DFW) and SWRCB, for water supply projects and flood risk reduction projects, to issue a final Lake and Streambed Alteration Agreement (LSAA) or take final action on water quality certifications issued pursuant to either Porter-Cologne or under the federal CWA, as applicable, within specific timeframes.

Fiscal Impact:

- SWRCB estimates one-time costs of \$225,000 (General Fund or special fund) to revise databases and update processes, develop a reporting mechanism, and train staff. In addition, SWRCB estimates ongoing costs of \$450,000 annually (General Fund or special fund) to implement a petition process during the application review period as required under this bill.
- Unknown, likely significant costs (General Fund or special fund) for the Department of Fish and Wildlife (DFW) to issue a final LSAA or take final action on water quality certifications issued pursuant to either Porter-Cologne or under the federal Clean Water Act, as applicable, within specific timeframes.

Background:

Lake and streambed alteration. The Lake and Streambed Alteration Program (Fish and Game Code (FGC) §§ 1602 et. seq.) requires any person, state or local governmental agency, or public utility to notify the California Department of Fish and Wildlife (DFW) before beginning any activity that may do any of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change the bed, channel, or bank of any river, stream, or lake;
- Use material from any river, stream, or lake; or
- Deposit or dispose of material into any river, stream, or lake.

Once DFW receives the notification, DFW determines whether the notification is complete. If the notification is deemed incomplete, DFW contacts the notifying entity and informs them what information must be provided to make it complete. Once a notification is deemed complete, DFW determines if the project described in the notification will substantially alter a river, stream, or lake. If DFW determines that the project will not substantially alter a river, stream, or lake, DFW provides written

verification of that fact and the entity may conduct that activity as described in the notification.

If DFW determines that the activity, as described in the notification, would substantially alter a river, stream, or lake, and that it may substantially adversely affect existing fish or wildlife resources, a Lake or Streambed Alteration Agreement (LSAA) is required. An LSAA is a type of permit that includes mitigation measures necessary to protect fish and wildlife resources. Before issuing an LSAA, a project must have completed a California Environmental Quality Act (CEQA) analysis. Emergency work, such as those necessary to protect life or property, do not require an LSAA.

This law was first enacted in 1970, reenacted in 1976, and amended in 2003, but the purpose of the law has never changed. The law declares, “The protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people’s food supply; therefore their conservation is a proper responsibility of the state.” (FGC §1600)

State and federal regulatory authority over water quality. The Porter-Cologne Water Quality Control Act (Porter-Cologne), enacted in 1969, vests the SWRCB with ultimate authority over state water quality policy. The regional water quality control boards oversee water quality at the local level. Collectively, these are known as the “Water Boards.” Porter-Cologne sets the goal of regulating activities in California to achieve the highest reasonable water quality. Three years after the enactment of Porter Cologne, Congress enacted the Federal Water Pollution Act Amendments of 1972, commonly referred to as the Clean Water Act (CWA).

Executive Orders related to the drought. Since July 2021, Governor Newsom has issued four executive orders in response to the drought: Executive Orders N-10-21, N-7-22, N-3-23, and N-4-23. On March 24, 2023, the Governor issued Executive Order N-5-23 to “terminate several operative provisions” “that are no longer needed in light of improving drought conditions.” Of the 81 operative provisions, 49 were terminated and 32 remain in effect. The remaining operative provisions include, among others:

- Directing the Water Boards to prioritize processing of applications for groundwater recharge projects, and suspending CEQA for such projects. (Executive Order N-7-22, Paragraph 12)
- Suspending CEQA for specified flood-related and state-supported recharge projects. (Executive Order N-7-22, paragraph 13)
- Facilitating the diversion of flood flows to accelerate groundwater recharge, under specified conditions that limit permissible diversions to those that do not harm water quality, habitat, or infrastructure. (Executive Order N-4-23, paragraphs 2-5,7)

Proposed Law: This bill would require the SWRCB and regional water quality boards to use an approved regional habitat conservation plan or natural communities conservation plan, as specified, as a watershed plan for such aquatic resources, unless the permitting authority makes a written determination, based on substantial evidence in the record, that the HCP or NCCP does not substantially meet the definition of a watershed plan for such aquatic resources. It would also require DFW and the SWRCB,

for water supply projects and flood risk reduction projects, to issue a final LSAA or take final action on water quality certifications issued pursuant to either Porter-Cologne or under the federal CWA, as applicable, within specific timeframes. Specifically, this bill would:

For the purposes of water quality certifications:

1. Require that any habitat conservation plan approved by the United States Fish and Wildlife Service pursuant to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) before December 31, 2020, and any natural communities conservation plan approved by the Department of Fish and Wildlife pursuant to the Natural Communities Conservation Planning Act before December 31, 2020, shall be used by the state board and regional boards as a watershed plan for those aquatic resources, unless the permitting authority makes a written determination, based on substantial evidence in the record, that the habitat conservation plan or natural communities conservation plan does not substantially meet the definition of a watershed plan for those aquatic resources.
2. Require SWRCB and regional boards to implement the procedures, including provisions related to watershed plans, to address the impacts of dredge and fill activities from water supply and flood risk projects.
3. Beginning on January 1, 2025, and annually thereafter, require SWRCB and regional boards to prepare, provide public notice of, make available for public review on its internet website, and submit to the relevant legislative policy committees and relevant legislative budget committees a report as specified.

For the purposes of LSAAAs:

4. Require DFW, for water supply projects and flood risk reduction projects subject to LSAAAs whose project proponent submits a complete notification for the project activity and submits the certified or adopted environmental documentation for the activity, to issue a final agreement within 180 days of receiving a complete notification or within 90 days of receiving the certified or adopted environmental review document, as applicable. DFW and the project proponent can agree to extend this time period.
5. If the department and project proponent are not able to reach a final agreement on all measures within that timeframe, the project proponent can proceed under a final agreement issued by an arbitration panel.
6. Require, on or before January 1, 2025, and annually thereafter, DFW to report on the water supply projects and flood risk reduction projects for which final agreements have been issued pursuant to these provisions.
7. Sunset these provisions on January 1, 2029.

Related Legislation:

SB 651 (Grove) would require CEQA-related challenges to projects that enhance the ability of the state or local agency to capture high precipitation events for local storage or recharge be decided by the courts within 270 days, if feasible.

AB 830 (Soria) would exempt from lake or streambed alteration agreement provisions temporary operation of existing infrastructure or temporary pumps being used to divert flood stage and monitor stage flows to beneficial groundwater recharge necessary to protect downstream life and property.

AB 1581 (Kalra) would exempt certain individuals, public agencies, universities, zoological gardens, and scientific or education institutions authorized to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes from the requirement to obtain a lake or streambed alteration agreement and instead requires these entities to submit to CDFW a written notification and copy of proposed environmental protection measures authorized by other agencies' programmatic habitat restoration permits and guidance.

AB 1376 (Gray, 2021) would have prohibited the State Water Board from issuing a certificate or statement under federal water quality control laws until there is a 60-day public comment and review period for the certificate or statement and after that review period a majority of the members of the State Water Board vote on the certificate or statement. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.

AB 92 (Budget, Chapter 18, Statutes of 2020) allows the State Water Board to issue a water quality certification before the completion of the environmental review of the project.

AB 3005 (R. Rivas, 2020) would have expedited permitting and contracting requirements to facilitate the replacement of the Leroy Anderson Dam and Reservoir (Anderson Dam). Vetoed by the Governor.

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