SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Blakespear, Chair
2025 - 2026 Regular

Bill No:	AB 1373		
Author:	Soria		
Version:	5/23/2025	**Hearing Date:**	7/16/2025
Urgency:	No	**Fiscal:**	Yes
Consultant:	Taylor McKie		

SUBJECT: Water quality: state certification

DIGEST: This bill requires the State Water Resources Control Board (State Water Board) to hold a public hearing before acting on an application for certification for a license to operate a hydroelectric facility.

ANALYSIS:

Existing federal law:

1) Establishes the Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (U.S.C.) §1251 et seq.)

Existing state law:

1) Establishes the Porter-Cologne Water Quality Control Act (Porter-Cologne), which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code (WC) § 13000 et seq.)

2) Designates the State Water Board as the water pollution control agency for all purposes stated in the federal CWA. Authorizes the State Water Board to give any certificate or statement required by any federal agency pursuant to the CWA. (WC § 13160)

3) Authorizes the State Water Board to establish a reasonable fee schedule to cover the costs incurred by the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) in connection with any certificate that is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to Section 401 of the Federal Water Pollution Control Act. (WC § 13160.1.)

4) Requires draft waste discharge requirements (WDR) be made available to the public for a 30-day comment and review period before the draft WDR is considered for adoption by the State Water Board. (WC § 13167.5)

5) Requires public notice of an application, pursuant to Section 401 of the CWA, for at least 21 days before taking action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. (California Code of Regulations, Title 23, § 3858)

This bill:

1) Requires the State Water Board to hold a public hearing at least 21 days before acting on an application for certification for a license to operate a hydroelectric facility, if requested by the applicant within 14 days of the issuance of an initial draft certification.

2) Prohibits the authority to issue certification for a license to operate a hydroelectric facility from being delegated if a public hearing is requested.

3) Authorizes the State Water Board to include reasonable costs incurred in holding a public hearing or issuing certification in its fee schedule, if the authority to issue the certification could not be delegated.

Background

1) *Federal Clean Water Act*. The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972, and became commonly known as the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the U.S. Environmental Protection Agency (U.S. EPA) has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water.

2) *401 water quality certification*. According to Section 401 of the CWA, any entity applying for a federal license or permit to conduct any activity that may result in a discharge of pollutants into federal waters must obtain a water

quality certification from the state in which the activity is to occur. For example, performing an activity that requires the dredging or filling of rivers, streams, or wetlands (dredge and fill projects) requires a water quality certification. Typical dredge and fill projects include building bridges, widening roadways, and stabilizing roadway slopes and embankments. When the State issues a water quality certification for a project, it is certifying that the project will comply with state and federal water quality laws and regulations. Once the State issues its certification, it is up to the applicable federal entity to decide whether to issue a federal license or permit allowing the project to proceed. The federal government cannot, however, issue a license or permit that requires a water quality certification until the state where the activity will occur has done so or the state has waived its right to certify.

The type of permit/certification required depends whether the projects are impacting federal waters or waters of the state. CWA section 401 water quality certifications are issued to applicants for a federal license or permit for activities that may result in a discharge into waters of the United States. Waste discharge requirements under Porter-Cologne are issued for discharges of dredged or fill material to waters of the state. Hydroelectric facilities require these permits in order to operate.

3) *Discharges of dredged or fill materials to waters of the state*. In 2019, the State Water Board adopted the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures). These Procedures cover the 401 certification process by the State Water Board. The State Water Board adopted the Procedures, which became effective May 28, 2020, to address several important issues.

   First, there was a need to strengthen protection of waters of the state that were no longer protected under the Clean Water Act due to U.S. Supreme Court decisions, since the Water Boards historically relied on Clean Water Act protections during dredged or fill discharge permitting practices.

   Second, there was inconsistency across the Water Boards in requirements for discharges of dredged or fill material into waters of the state, including wetlands.

   Third, there was no single accepted definition of wetlands at the state level, and the Water Boards historically had different requirements and levels of analysis regarding issuance of dredge or fill permits.

Finally, regulations have historically not been adequate to prevent losses in the quantity and quality of wetlands in California, where there have been especially profound historical losses of wetlands.

As part of the Procedures, the Executive Director or Executive Officer, or their designee, has the authority to issue the 401 certification. This bill prohibits the State Water Board from delegating the authority to issue a certification for a license to operate a hydroelectric facility to the Executive Director or Officer because the implications of issuing certifications for these facilities can be significant.

4) *Hydroelectric facilities in California*. There are approximately 40 hydroelectric facilities in the state. Hydroelectric facilities that have less than 30 megawatts (MW) of generation capacity are considered small. Utilities such as Southern California Edison, Pacific Gas and Electric, and the Sacramento Municipal Utility District operate small hydroelectric facilities. Large hydroelectric projects are facilities that have more than 30 MW of generation capacity. The United States Bureau of Reclamation and the state's Department of Water Resources operate large hydroelectric plants in California such as Folsom Dam, Oroville Dam, and Shasta Dam. In California, hydroelectric facilities include:
    - Dams (or pondage) facilities raise the water level of a stream or river to an elevation necessary to create a sufficient elevation difference. Dams can be constructed of earth, concrete, steel, or a combination of such materials. Dams may create secondary benefits such as flood control, recreation opportunities, and water storage;
    - Run-of-river, or water diversion, facilities divert water from a natural channel to a course with a turbine and usually return the water to the channel downstream of the turbine; and,
    - Pumped storage facilities pump water during off-peak demand periods from a reservoir at a lower elevation for storage in a reservoir at a higher elevation. Electricity is generated during peak demand periods by releasing the pumped water from the higher reservoir so it flows downhill through the hydraulic turbine(s) connected to generators. During the off-peak pumping cycle, the pumped storage facility consumes electricity.

    Hydroelectric facilities present renewable energy and economic opportunities for communities proximal to natural environments that can support their operations. While existing hydroelectric facilities bring many benefits, there can be negative impacts to the surrounding communities if not addressed responsibly. These facilities can have biological and hydrological implications,

as natural flow patterns and water levels may be disrupted, fish populations could decline, and the surrounding ecosystem could be impacted. This could also lead to impacts on community water supplies and the quality of drinking water, with fluctuating patterns in sediment transport. Certifications must also evolve with community needs, as some communities undergoing certification renewal with hydroelectric facilities have lost access to infrastructure.

This bill ensures that there is a mechanism for community engagement through public hearings and that there is consideration of these factors in the decisions for renewed certifications for hydroelectric facilities.

Comments

1) *Purpose of Bill.* According to the author, "The State Water Resources Control Board has the responsibility to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. These certifications, which commonly last decades, contain mandatory conditions for their associated federal license or permit, meaning facility operators must accept whatever is approved by the SWRCB without modification or risk forfeiting their license to operate. The conditions included in 401 Water Quality Certificates have the potential to significantly impact the social, economic, and environmental conditions of the communities served by these projects and should not be made behind closed-doors when a dispute over their terms arise. AB 1373 would require a more public process, including a hearing and vote, when requested by an applicant and give those involved the opportunity to be heard."

2) *Considering community impacts*. Permitting and operating a hydroelectric facility can have significant implications for the surrounding community. There has to be a consideration for the ecological environment, water quality, water supply, and surrounding infrastructure when operating these facilities. Licenses for hydroelectric facilities can last for up to 50 years, so the impacts a community may face, positive and negative, from these facilities could be long lasting. Such decisions could benefit from community engagement in the form of a public hearing, as this bill proposes. The bill also prohibits the State Water Board from delegating the authority to issue the certification if a public hearing is requested, so that the Board members are able to weigh in on these significant decisions.

3) *Imposing more process*. By prohibiting the State Water Board from delegating the authority to issue certifications for some hydroelectric facilities, this bill does create more work for the State Water Board. The authority can be typically delegated to staff to share the workload in issuing certifications and

permits, streamlining the process and leading to faster decisions. It might be worth the wait in this case, as some decisions regarding hydroelectric facilities weigh heavily on certain communities.

Amendments were made in the Assembly to ensure that public hearings and delegation restrictions are only in place when an applicant for a certification requests them, as this decision-making process may not be necessary for all hydroelectric facilities. This amendment will ensure that the State Water Board is not overburdened and intends to prevent delay. Furthermore, there are 125 actively licensed facilities in the state with certifications that last for decades (~20-50 years), so the frequency of new applications will be relatively low. For the purpose of protecting the communities in which these hydroelectric facilities are sited, imposing more process by ensuring there is public engagement will be meaningful.

Related/Prior Legislation

AB 2605 (Villapudua, 2022) would have added requirements on the State Water Board when reviewing an application for water quality certification. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.

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.

SOURCE: Author

SUPPORT:

Association of California Water Agencies (ACWA)
Valley Ag Water Coalition

OPPOSITION:

None received

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