GOVERNOR'S VETO
AB 1373 (Soria)
As Enrolled September 16, 2025
2/3 vote

SUMMARY

Requires the State Water Resources Control Board (State Water Board), before acting on an application for certification under the federal Clean Water Act (CWA) for a license to operate a hydroelectric facility, and if requested by the applicant within 14 days of an initial draft certification being issued, to hold a public hearing at least 21 days before taking action on the certification.

Senate Amendments:

Authorize the State Water Board to conduct the public hearing required by this bill to be part of a regularly scheduled State Water Board meeting.

Governor's Veto Message
This bill would require the State Water Resources Control Board (Board) to hold a public hearing at least 21 days prior to acting on an application for a water quality certification for a license to operate a hydroelectric facility.

While well-intentioned, this bill is unnecessary. The Board's certification process already includes opportunities for input by members of the public and Board members, including a mechanism for Board members to reconsider decisions initially delegated to staff. I am, however, directing the Board to work with the relevant stakeholders to explore ways to make this process more efficient, consistent with the intent of this bill.

COMMENTS

Federal CWA: The Federal Water Pollution Control Act of 1948 was the first major United States (U.S.) law to address water pollution. The law was amended in 1972, and became commonly known as the CWA. The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the U.S. and regulating quality standards for surface waters. Under the CWA, the U.S. Environmental Protection Agency has implemented pollution control programs, including setting wastewater standards for industrial facilities, and water quality standards for 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 under the CWA in order to discharge into surface water.

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.

401 water quality certification and waste discharge requirements: The 401 water quality certification program is responsible for regulating discharges of dredged or fill material to waters of the state. The State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) regulate these discharges under section 401 of the CWA and under California's Porter-Cologne Water Quality Control Act (Porter-Cologne). 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 U.S., including but not limited to, the discharge of dredged or fill material. Waste discharge requirements under Porter-Cologne are issued for discharges of dredged or fill material to waters of the state.

Procedures for discharges of dredged or fill material 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 CWA due to U.S. Supreme Court decisions, since the State Water Boards and Regional Water Boards historically relied on CWA 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 of the State Water Board, or their designee, has the authority to issue the 401 certification.

This bill: This bill would prohibit the State Water Board from delegating the authority to issue a certification under the CWA for a license to operate a hydroelectric facility to the Executive Officer of the State Water Board.

Public notice for waste discharges: Section 13167.5 of the Water Code requires that draft waste discharge requirements be made available to the public for a 30-day comment and review period before the draft discharge requirement is considered for adoption by the State Water Board. The California Code of Regulations, Title 23, section 3858, requires public notice of an application for a 401 water quality certification 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.

Hydroelectric facilities: Hydroelectric facilities smaller 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 those larger than 30 MW of generation capacity. The U.S. 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. California's hydroelectric generation plants are mostly in the eastern mountain ranges. The state also imports its hydroelectric-generated electricity from the Pacific Northwest and the Southwest. There are at least 40 hydroelectric facilities in the state (includes both small and large hydro).

This bill: AB 1373 requires the State Water Board to hold a public hearing on a proposed certification under the CWA for a hydroelectric facility, if requested by the hydroelectric facility. The bill also prohibits the State Water Board from delegating the decision to issue the certification for a hydroelectric facility under the CWA to the Executive Officer, if a public hearing is requested by the hydroelectric facility. Additionally, AB 1373 authorizes the State Water Board to include in its fee schedule for hydroelectric facility applicants an amount not to exceed the reasonable costs incurred by the State Water Board in holding a public hearing or issuing a certification for a hydroelectric facility pursuant to the provisions of this bill. The author and proponents of the bill contend that hydroelectric facilities, including their proposed certifications under the CWA, are very complex, and therefore these certifications should be decided on by the State Water Board at a public hearing.

According to the Author
"The [State Water 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 [State Water Board] 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 and without the opportunity for the [State Water Board] to weigh-in. AB 1373 would require a more public process and give all those involved the opportunity to be heard."

Arguments in Support
According to the Turlock Irrigation District (TID),

> "Over the last few decades, the State Water Board has delegated many of its authorities to staff, removing the option for members of the public to voice their concern on matters of significance to their communities. While we can appreciate the need to expedite certain administrative actions to streamline workload, not every action should be treated the same. One such area of delegated authority is the issuance of water quality certificates under Section 401 of the Clean Water Act. These certificates are essential to the operations of hydroelectric facilities that provide other essential benefits to many disadvantaged communities across the state.
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> TID is the majority owner and operator of the Don Pedro Project, a 203MW carbon-free resource, on the Tuolumne River. The Don Pedro Project is the economic backbone of our region, providing flood control protection, reliable carbon free energy, municipal drinking water, irrigation water, and environmental flows.
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> The Don Pedro Project is a Federal Energy Regulatory Commission (FERC) jurisdictional facility. As part of FERCs licensing process to operate a hydroelectric facility (for facilities under its jurisdiction), the State Water Board has the responsibility to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. State certification conditions

become mandatory conditions of any federal license or permit for the project, meaning whatever is approved by the State Water Board must be accepted without modification or the final license to operate, or continue to operate, will not be issued by FERC.

Requiring an open forum would allow the communities that rely on these projects to provide meaningful comments to the State Water Board on potential impacts or consequences. Additionally, decisions as significant as these should be made by the State Water Board, rather than being delegated to staff."

Arguments in Opposition
According to Sierra Club California,

"With the effective loss of federal natural resources agencies during this current Administration, water quality certification conditions are the only counterbalance to the FERC/licensee side of the high-stakes game. This Administration is expected to walk back the certification regulations created by the Biden Administration.

Blocking delegation or imposing a public hearing before the already heavily over-scheduled State Water Resources Control Board creates unnecessary impediments in a time limited process. Delegation helps make the process more efficient and allows the State Water Board to meet their deadlines- while a three week notice on a public hearing imposes unnecessary delays. The Board already has a public comment period for draft water quality certifications so a public hearing is unnecessary and creates more work for the State Water Board."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, enactment of this bill could cost the State Water Board an unknown and variable amount to hold public hearings before taking action on 401 certifications for hydroelectric facilities. Actual costs will depend on the number of applicants who request a public hearing every year. The bill authorizes the State Water Board to recover any reasonable costs it incurs in holding a public hearing or issuing a certification for a license to operate a hydroelectric facility when the authority to issue that certification cannot be delegated, as provided.

VOTES

ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 7-0-0
YES: Connolly, Ellis, Bauer-Kahan, Castillo, Lee, McKinnor, Papan

ASM APPROPRIATIONS: 11-0-4
YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache
ABS, ABST OR NV: Sanchez, Dixon, Ta, Tangipa

ASSEMBLY FLOOR: 74-0-5
YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas
ABS, ABST OR NV: DeMaio, Hadwick, McKinnor, Muratsuchi, Sanchez

SENATE FLOOR: 40-0-0
YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ASSEMBLY FLOOR: 73-0-7
YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, Dixon, Elhawary, Ellis, Fong, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Johnson, Kalra, Krell, Lee, Lowenthal, Macedo, McKinnor, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Rivas
ABS, ABST OR NV: DeMaio, Flora, Gabriel, Lackey, Muratsuchi, Sanchez, Zbur

UPDATED

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