

Date of Hearing: April 20, 2026

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Isaac G. Bryan, Chair

AB 2026 (Aguiar-Curry) – As Amended April 16, 2026

**SUBJECT:** Water diversion: groundwater recharge: permit

**SUMMARY:** Codifies five exemptions from the California Environmental Quality Act (CEQA), based on existing practice under executive orders, for specified actions to divert surface water for groundwater recharge that do not involve construction. Adds tribal consultation requirements for each of these exemptions consistent with existing CEQA requirements.

*Note this analysis focuses on the CEQA provisions of this bill. For a full analysis of this bill's amendments to existing authority and permitting processes for groundwater recharge projects, refer to the Water, Parks and Wildlife Committee analysis.*

**EXISTING LAW:**

- 1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code (PRC) 21000 *et seq.*)
- 2) Requires a lead agency to determine whether a project is exempt from CEQA and whether an EIR, MND, or ND is required. (PRC 21080.1)
- 3) Requires the CEQA Guidelines to include a list of classes of projects that have been determined by the Secretary of the Natural Resources Agency to not have a significant effect on the environment and that shall be exempt from CEQA. (PRC 21084)
- 4) Defines “project” as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, including an activity that involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (PRC 21065)
- 5) Defines “tribal cultural resources” as either sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to specified criteria. Requires the lead agency to consider the significance of the resource to a California Native American tribe. (PRC 21074)
- 6) Requires, prior to the release of an EIR, MND, or ND for a project, the lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. (PRC 21080.3.1)

- 7) Requires, as a part of the consultation, the parties may propose mitigation measures, including, but not limited to, those recommended capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. If the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics. (PRC 21080.3.2)

**THIS BILL:**

- 1) Codifies CEQA exemptions for:
  - a) The diversion of floodflow for groundwater recharge commenced before January 1, 2034.
  - b) State Water Resources Control Board issuance of a permit for specified water diversions through existing diversion infrastructure or temporary facilities.
  - c) Adoption of emergency regulations for temporary urgency permits and for temporary permits for diversion to underground storage.
- 2) For each of these exemptions, requires the lead agency to provide notice to and consult with California Native American tribes in accordance with existing provisions of CEQA, and confirms that a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Background.** To take advantage of the wet conditions in winter 2023 and capture high water flows for groundwater recharge, Governor Newsom issued Executive Order (EO) N-4-23 which, among other provisions, authorized diverters to temporarily take “floodflows” off streams and rivers for groundwater recharge without obtaining a water right, complying with CEQA, or obtaining a lake and streambed alteration agreement (LSAA). The authority in EO N-4-23 was modified and extended through EO N-7-23 and then codified into law with the passage of SB 122 (Committee on Budget and Fiscal Review), Chapter 51, Statutes of 2023. SB 122 makes various changes to the EOs, including adding a requirement that a local or regional agency must rely upon a local plan of flood control or a county general plan that considers flood risk in order for an unpermitted diversion of floodflows to occur within the agency’s territory. Further, the diverted water cannot be applied to certain types of land (e.g., where manure has been applied in the previous 45 days) and the diversion must meet the following criteria:
  - Use existing diversion infrastructure or temporary pumps;
  - Use existing groundwater recharge locations;
  - Not use new permanent infrastructure or permanent construction; and
  - Use protective screens on temporary pumps to protect fish and other aquatic life when water is diverted directly from a river or stream.

Governor Newsom issued EO N-16-25 in January 2025 that waived the requirement under SB 122 that flood thresholds that trigger conditions for diversion be defined in a local plan of flood control or general plan. This bill codifies this waiver.

2) **Author's statement:**

California's largest reservoirs are naturally-occurring groundwater aquifers, making recharge the most effective tool California has to secure its water future. As the climate changes, California's water storage strategy must also change to adapt to a more extreme water future. Groundwater recharge creates environmental and public benefits by preventing land subsidence, creating flood protection by safely diverting excess flows, and helping communities meet their Sustainable Groundwater Management Act (SGMA) goals affordably. AB 2026 modernizes California's groundwater recharge policy by improving permitting processes, making it easier to safely capture flood flows, and maintaining strong safeguards for water right holders. Although California has the infrastructure and ability to divert excess water, operators struggle to recharge beneficial amounts for reasons including cost, time of year, and regulatory hurdles. When California can take advantage of its natural capacity to store groundwater during intense wet intervals, communities and the environment benefit. Adapting our groundwater recharge strategy will help provide stability for California in a time of water extremes

3) **Double referral.** This bill was heard and approved by the Water, Parks and Wildlife Committee, with the amendments now in print, by a vote of 11-0 on April 14.

4) **Suggested amendment.** *The author and the committee may wish to consider the following clarifying amendments to the CEQA exemption for floodwater diversion:*

(h) The diversion of floodflow for groundwater recharge pursuant to this section shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code and Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, *provided the diversion does not otherwise require a discretionary permit and is carried out consistent with all requirements of this section, including no permanent construction.* Notwithstanding any other law, and regardless of whether a project ~~described in an action authorized by this subdivision~~ is exempt from environmental review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other law, a lead agency shall provide notice to and consult with California Native American tribes in accordance with Sections 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3 of the Public Resources Code before approving or carrying out a project described in this subdivision, and a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Water Association  
Northern California Water Association  
Regional Water Authority  
Self-help Enterprises

**Opposition**

Defenders of Wildlife (unless amended)

Friends of the River

Golden State Salmon Association

San Francisco Baykeeper

San Joaquin Tributaries Authority (unless amended)

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