ASSEMBLY THIRD READING
AB 2026 (Aguiar-Curry)
As Amended April 22, 2026
Majority vote

SUMMARY

Makes numerous changes to existing authority and permitting processes for groundwater recharge projects.

Major Provisions

1) Deletes the requirement that a local or regional agency must have adopted a local plan of flood control or general plan that has considered flood risk in order to provide notice that there is an imminent risk of flooding (thereby allowing for diversion of floodflows for groundwater recharge). Instead, simply requires that the local or regional agency be "responsible for flood management" in order to provide such notice.

2) Expands the definition of "floodflow" to include flows occurring downstream of a dam that is releasing water for flood control purposes as required by a U.S. Army Corps of Engineers flood control rule, a court judgment, or other binding rule.

3) Provides that diversion of floodflows for groundwater recharge from the Sacramento River or its tributaries may only occur when the Delta is in excess conditions without restrictions.

4) Provides that diversion of floodflows for groundwater recharge from the Delta or its tributaries other than the San Joaquin River may only occur when the Delta is in excess conditions and either of the following applies:

   a) The Delta is without restrictions; or

   b) The Delta is with restrictions, but Delta operations are only controlled by Old and Middle River flow or San Joaquin River inflow-to-export ratios.

5) Permits a groundwater sustainability agency to grant an allocation credit to a person that diverts floodflows for groundwater recharge. The allocation credit shall not exceed the amount of water reported to the State Water Resources Control Board (State Water Board).

6) Extends the sunset by five years to January 1, 2034 on the authority to divert floodflows for groundwater recharge without obtaining a permit.

7) Exempts the diversion of floodflows for groundwater recharge from the California Environmental Quality Act (CEQA) and Lake and Streambed Alteration Agreement (LSAA) requirements if the diversion does not require a permit or involve new construction.

8) Provides that the inclusion of the following permit terms in a 180-day permit, 5-year permit, or minor application to divert water to underground storage shall satisfy the State Water Board's finding that a diversion will not injure legal users of water from the Central Valley Project (CVP) or State Water Project (SWP):

a) For diversion from the San Joaquin River or its tributaries, water may only be diverted when the Delta is in excess conditions without restrictions; and

b) For diversion from the Delta or its tributaries other than the San Joaquin River, water may only be diverted when the Delta is in excess conditions and either the Delta is without restrictions or, the Delta is with restrictions, but Delta operations are only controlled by Old and Middle River flow or San Joaquin River inflow-to-export ratios.

9) Provides a minor application, a 180-day permit application, and a 5-year permit application are exempt from CEQA and LSAA requirements if diversion will occur from the following:

a) Existing diversion infrastructure; or

b) Temporary facilities that do not require construction and have protective screens that meet specified standards to minimize impacts on fish and other aquatic life.

10) Permits the State Water Board to consider a minor application, an application for a 180-day permit, or a 5-year permit to divert water to underground storage on a river or stream that the State Water Board has designated as "fully appropriated" if the river is subject to an agreement or memorandum of understanding among water suppliers and nongovernmental organizations concerning the coequal goals of reliable water supplies and preservation of the reach's environmental value.

COMMENTS

Groundwater is an important source of supply for California's communities, economy, and diverse natural resources. Groundwater recharge occurs when water on the earth's surface percolates down through layers of soil and earth into aquifers. Recharge occurs naturally when it rains and when water moves through rivers, streams, and creeks. It can also occur through active management when individuals or agencies divert water from a waterway to farmland or a settling basin where the water can gradually percolate down into the aquifer. Rates of recharge vary by soil type and conditions, but it is generally not a rapid process. Active groundwater recharge requires advance planning and infrastructure to be successful.

Interest in expanding groundwater recharge has increased since the passage of the Sustainable Groundwater Management Act (SGMA) in 2014. In a 2020 study reviewing GSPs developed under SGMA and submitted for critically overdrafted basins in the San Joaquin Valley, the Public Policy Institute of California (PPIC) showed that, collectively, the GSPs intend to recharge nearly 1 million acre-feet (MAF) of water annually to address groundwater overdraft. This is significant given that PPIC estimated that groundwater overdraft in the San Joaquin Valley for the 1987-2017 period was nearly 2 MAF annually. Further analysis by PPIC in June 2025 found that in 2023 as much as 11.2 MAF from the Sacramento River and 3.4 MAF from the San Joaquin River may have been available for groundwater recharge.

A water right or permit is required to capture water during high-flow or flood events and store it for later use. A permanent right takes a great deal of time and resources to obtain; as a result, many entities interested in groundwater recharge have pursued a temporary (180-day) permit instead. Whether pursuing a permanent permit (a process that can take more than seven years) or temporary permit, stakeholders have expressed frustration with the permitting process for groundwater recharge. A 2023 survey on groundwater recharge in the San Joaquin Valley

conducted by PPIC indicates that 32% of respondents report a "permitting or regulatory barrier" to implementing groundwater recharge projects (compared to 49% of respondents that report an "infrastructure barrier" and 23% that report a "cost of funding barrier").

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, and obtaining a 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 in 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).

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.

A water availability analysis is a necessary part of any water right application and helps to determine whether there is actually water available to be diverted from the stream, river, or water body subject to the application. This information is required per Water Code Section 1260: An applicant for a permit to appropriate water shall set forth all of the following: … "(k) Sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation." The water availability analysis can be a time-consuming and costly (oftentimes exceeding $50,000) part of the application process. The State Water Board currently allows for an expedited form of water availability analysis for temporary permits for groundwater recharge that is referred to as the "90/20 method." This bill defines the "90/20 method" in statute and establishes two new criteria ("flood/recharge diversion" and "location-specific diversion criteria") that are intended to create expedited pathways for completion of a water availability analysis for permits to recharge groundwater.

AB 658 (Arambula) Chapter 678, Statutes of 2019 established a five-year temporary permit for groundwater recharge in 2019. Since that time, the State Water Board has issued nine five-year permits. This Committee conducted an Outcomes Review hearing on AB 658 on March 10, 2026 that found the legislation marked an important step forward in meeting the state's groundwater recharge goals, but that some improvements to the permitting process would still be helpful. This bill incorporates some of the ideas discussed in the Outcomes Review hearing, including a statutory CEQA exemption for five-year temporary permits, a rolling permit start date if hydrologic conditions are not favorable at the time a permit is issued, and ways to streamline the water availability analysis.

A complex set of regulatory requirements and operational guidelines govern the operation of the pumping plants in the Delta for SWP and CVP. These include Water Rights Decision 1641, Biological Opinions under the federal Endangered Species Act, and the Coordinated Operations Agreement between the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation, among others. This web of regulations and rules are designed to protect water right holders, water quality for human consumption and agriculture, and fish and wildlife. The water contributions of SWP and CVP to meet these regulatory standards reduce the water

available for export from the Delta. Because of this situation, water agencies that receive exported water through the Delta are particularly attuned to additional diversions upstream of the Delta and, as a result, have protested many water right applications for groundwater recharge projects unless the permits include terms to restrict diversions to those times when the Delta is in "excess" conditions and when other restrictions do not apply. The intent of these permit terms is to ensure that water diverted upstream of the Delta does not take water away from CVP and SWP meeting regulatory requirements or reduce the amount that can be legally exported.

This bill defines the terms "excess water conditions," "Delta is with restrictions," "Delta is without restrictions" that indicate when Delta operations are and are not constrained due to regulatory requirements. When these restrictions are in place, this bill limits the ability of parties to divert floodflows and to divert to underground storage under a permit. This provision is more restrictive on diversions upstream of the Delta along the San Joaquin River or its tributaries than it is upstream of the Delta along the Sacramento River and its tributaries.

The U.S. Army Corps of Engineers provides guidance for dams to develop a water control plan (33 Code of Federal Regulations § 222.5) that governs dam/reservoir operations. Water control plans for dams that provide flood risk reduction include a flood control rule or curve to ensure there is sufficient storage space behind the dam to capture runoff from winter storms and thereby reduce the risk of flooding to infrastructure and communities downstream of the dam. To reserve storage space, a dam operator will release water in advance of periods that historically have experienced high levels of precipitation; these releases are sometimes referred to as "flood releases." This bill allows a permittee to divert "flood releases" to groundwater recharge if those releases are occurring pursuant to a U.S. Army Corps of Engineers water control plan, court judgment, or other binding rule.

Fully appropriated stream systems are those where the available water has been allocated under existing water rights so that there is insufficient supply for new water right applications. The State Water Board maintains a list of fully appropriated stream systems that was most recently updated in November 1998 with the adoption of Water Right Order 98-08. There are hundreds of streams and water bodies across the state that have been designated as fully appropriated for all or part of the year. Many rivers are designated as fully appropriated from spring through fall seasons, typically the driest times of the year. The State Water Board sets procedures by which parties can petition to revise a declaration that a stream system is fully appropriated to allow the acceptance of an application for a new water right (23 California Code of Regulations § 871). This bill permits applications for temporary water right permits for groundwater recharge on fully appropriated streams.

According to the Author
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 SGMA goals affordably. [This bill] 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, all communities benefit. Adapting our groundwater recharge strategy will help provide stability for California in a time of water extremes.

Arguments in Support
The Regional Water Authority (RWA) is a co-sponsor of this bill and contends that it will "significantly enhance the ability to increase the amount of groundwater recharge providing for water supply reliability and groundwater sustainability while maintaining existing protections for water right holders, Delta protections with operations of [SWP] and [CVP], and the environment." RWA notes that groundwater recharge is "statewide solution for water supply reliability and groundwater sustainability" and asserts that groundwater recharge efforts cannot be scaled to meet the state's goals without changes to the existing permitting process that this bill proposes. RWA concludes that "it is clear that we all lose if California cannot recharge its aquifers."

The Northern California Association (NCWA) is also a co-sponsor of this bill and indicates that work done by MBK Engineers shows that "in 2023 (a wet year) the SWRCB issued 2 permits that allowed for 21,200 [AF]; yet only 119 [AF was diverted. In 2024 (a wet year), the [State Water Board] issued 5 permits for a maximum of 39,350 [AF]; yet only 42 [AF] was diverted for recharge, all due to limitations in the permits." NCWA argues that this result demonstrates that "the existing permitting system is not enough: we need targeted, meaningful changes that enable us to recharge our basins and protect California from the long-term effects of drought and climate change."

Arguments in Opposition
Friends of the River (FOR) opposes this bill and argues that "the diversion of floodflows requires the careful development of a clear, comprehensive, and well thought out regulatory framework" and that the State Water Board is best positioned such a framework as the State Water Board "has the legal expertise necessary to ensure that existing statutory and regulatory requirements are incorporated into such a framework. The [State Water Board] also has the technical expertise to analyze the effects on water supply, water quality, and ecosystem health of the potential components of the framework." In contrast, FOR contends this bill will make it "easy to divert flows under a remarkably broad range of conditions outside of true flood conditions…that are not actually floodflows." FOR maintains that this bill will likely lead to adverse impacts on fish and wildlife as "the recovery and viability of many aquatic species depend to a large extent on flows greater than those required by regulation." Finally, FOR states this bill would "legislate a permanent 'urgent need' for water diversions, rewarding past overuse of groundwater with an unregulated means of overusing surface water."

Defenders of Wildlife (DOW) has taken an oppose unless amended position on this bill. DOW is very concerned about the reliance on Delta conditions that this bill proposes as existing Delta operations are resulting in harm to fish and wildlife and because water quality standards in the Delta have not been updated in over 30 years: "Therefore, this bill's proposed changes to Bay-Delta diversion criteria, including defining what is "excess" water in the system, is built on a degraded baseline of protections for an Estuary that is in severe decline, especially since the Legislature codified Water Code Section 1242.1 in 2023." DOW maintains this bill undercuts the State Water Board's authority and urges the Committee to strike sections of this bill pertaining to diversion of floodflows, protests on minor applications, CEQA and LSAA exemptions, and diversion of flood releases and to make changes to address flood liability to

allow more time to work on the many substantive issues in this bill. Finally, DOW states "We are at a critical point in water management, for California's communities and wildlife…. Without additional amendments, [this bill] would exacerbate this ongoing situation and continue the inappropriate and unsustainable reliance on pumped water from the Bay-Delta ecosystem."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill has the following fiscal impact:

1) The State Water Board estimates about $3.8 million in ongoing annual costs due to increased temporary and standard permitting and floodflow diversions. This includes two positions for increased work on emergency floodflow diversions, six positions for increased work on standard water right applications, three positions for increased work on temporary permits, one attorney, and three Information Technology (IT) and administrative staff. Workload includes developing and implementing new programs, promulgating new regulations and methodologies, and increased tribal consultation when applicable.

   For floodflow diversions, the State Water Board anticipates increased submittals because of changes to the U.S. Army Corps of Engineers definition of flood (essentially making it easier to claim flood releases) and because of ambiguity in the bill language. It is not clear to the State Water Board who would bear the brunt of evaluating how potential diversions impact downstream diverters and the ecosystem – but it would likely be the State Water Board.

   This bill makes many changes that are intended to make it easier for entities to submit temporary permits and streamline the permitting process. However, the State Water Board contends this bill introduces ambiguity that may make the timelines for temporary permits longer. For example, while this bill includes a CEQA exemption for private diverters, it preserves tribal consultation requirements. It is not clear which agency would serve as the CEQA lead for tribal consultation purposes, but it would likely be the State Water Board. Staff would need to ensure permits are done correctly and in accordance with the requirements of this bill. In addition, the proposed changes to the water availability analysis (going to an 80th percentile touchpoint with a 50th percentile recession minimum) would presumably open up many more opportunities for diversions and result in an increase in applications that require processing. The State Water Board notes its existing permitting staff are at capacity, and the increase in workload will require additional staff resources.

   Administrative and IT staff would, among other things, process an increased number of permits, keep the flood reporting portal up-to-date and ensure the portal is integrated with CalWATRS, and potentially build new Geographic Information System capabilities.

   Most of these costs would be borne by the Water Rights Fund (which is generally supported by fees) with $500,000 annually (mostly related to IT and administrative workload) attributable to the General Fund. It is unclear the extent to which certain provisions in this bill, like exempting certain actions from CEQA, may result in cost savings to the State Water Board and Regional Water Quality Control Boards.

2) The California Department of Fish and Wildlife (CDFW) estimates ongoing annual General Fund costs of about $850,000 for one senior environmental scientist specialist and six scientific aids. CDFW anticipates an increase in workload across all its regions and anticipates staff would need to review permit applications; consult and correspond with

applicants; conduct site inspections when appropriate; analyze proposed flow criteria, diversion infrastructure, and system-specific operations with respect to current hydrology, operations, and ecosystem conditions; carry out California Endangered Species Act consultation and permitting associated with temporary permits to recharge groundwater; coordinate with various subject matter experts; and develop mitigation measures to protect fish and wildlife resources.

CDFW further contends it is challenging to estimate the bill's impact on the LSAA program. While this bill exempts certain diversions from the LSA notification process, it nonetheless requires CDFW to consult with entities and develop individualized fish and wildlife resource protections for exempt projects while simultaneously restricting CDFW's ability to collect fees to pay for staff time and expertise through the notification process. The LSAA notification fee ranges from several hundred dollars to several thousand dollars depending on the complexity and cost of the project. This bill would be effective statewide and has the potential to result in a loss of tens of thousands of dollars annually (Fish and Game Preservation Fund).

3) Potential ongoing General Fund costs to DWR. DWR may incur costs related to, among other things, implementation of the SGMA and other regulatory work.

The Legislative Analyst's Office recently warned of General Fund structural deficits of around $35 billion per year in the 2027-28 fiscal year and ongoing.

VOTES

ASM WATER, PARKS, AND WILDLIFE: 11-0-2
YES: Papan, Jeff Gonzalez, Alvarez, Ávila Farías, Bennett, Boerner, Caloza, Gallagher, Hart, Muratsuchi, Rogers
ABS, ABST OR NV: Alanis, Bains

ASM NATURAL RESOURCES: 12-0-2
YES: Bryan, Ellis, Connolly, Garcia, Haney, Hoover, Kalra, Macedo, Muratsuchi, Pellerin, Schultz, Wicks
ABS, ABST OR NV: Alanis, Zbur

UPDATED

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