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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Josh Becker, Chair

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## SUMMARY

This bill would expand various existing processes under which water may be diverted from the Sacramento-San Joaquin Delta, including floodflows without an appropriate right, through a minor application to divert water, temporary urgency permits, and temporary permits for diversion to groundwater storage.

## BACKGROUND AND EXISTING LAW

### ***Groundwater, generally.***

Groundwater makes up a significant portion of the state's water supply, and can serve as a buffer against the impacts of drought and climate change. During an average year, groundwater makes up approximately 40 percent of the State's total water supply, and 60 percent or more during dry years. It is a major source of the state's drinking water supply and, according to the State Water Resources Control Board (State Water Board), approximately 33 million Californians use groundwater for drinking or other household uses.

Groundwater recharge occurs when water seeps into the ground to replenish underground aquifers and can play an important role in water management in California. Many areas throughout California already participate in groundwater recharge activities. Although some recharge happens incidentally, with water flowing into the ground from rivers, unlined canals, or excess irrigation, intentional recharge can restore groundwater levels and store water for later use. This occurs 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.

Recharge can also help mitigate impacts from groundwater pumping, such as dry wells or subsidence, while providing wetland habitat for birds, reducing flood risk, and storing water for droughts.

### ***Groundwater recharge and permitting.***

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 (a process that can take more than seven years); as a result, many entities interested in groundwater recharge have pursued a temporary (180-day) permit instead. Whether pursuing a permanent 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 the Public Policy Institute of California (PPIC) indicates that 32% of respondents report a “permitting or regulatory barrier” to implementing groundwater recharge projects (contrast with 49% of respondents that report an “infrastructure” barrier and 23% that report a “cost or funding barrier”).<sup>1</sup>

### ***Sustainable Groundwater Management Act (SGMA).***

Enacted in 2014, SGMA provides a framework for sustainable groundwater management in California. Under SGMA, responsibility primarily falls with the locals to determine how to best manage their groundwater basin. A local agency, or group of local agencies may form a groundwater sustainability agency (GSA) for the area’s basin and the GSA has broad management authority of the groundwater basin. GSAs are required to consider the interests of all beneficial uses and users of groundwater, including, but not limited to, holders of overlying groundwater rights, municipal well operators, public water systems, local land use planning agencies, environmental users of groundwater, surface water uses, the federal government, California Native American tribes, and disadvantaged communities.

SGMA requires GSAs in medium- and high-priority groundwater basins to develop and implement groundwater sustainability plans (GSPs). GSAs may customize their GSPs to their regional economic and environmental circumstances. Thus, while SGMA provides for the sustainable management of groundwater basins, it does so by empowering local agencies to manage groundwater basins.

### ***Increased interest in groundwater recharge.***

Interest in expanding groundwater recharge has increased since the passage of SGMA. In a 2020 study reviewing GSPs developed under SGMA and submitted for critically overdrafted basins in the San Joaquin Valley, PPIC shows that, collectively, the GSPs intend to recharge nearly 1 million acre-feet (MAF) of water annually to address groundwater overdraft.<sup>2</sup> This is significant given that PPIC estimates that groundwater overdraft in the San Joaquin Valley for the 1987-2017 period was nearly 2 MAF annually.<sup>3</sup>

### ***How Much Water Is Available for Recharge in the Central Valley? – according to PPIC.***

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.<sup>4</sup> It is important to note that 2023 was considered a “very wet year,” whereas 2024 and 2025 have been drier. According to the PPIC report “over the past two decades, wet years occurred five times (2006, 2011 2017, 2019, and 2023). In such years, there is so much water in the system that some additional recharge could occur without causing environmental or downstream tradeoffs, and there are likely also periods where more recharge would be possible if tradeoffs were properly

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<sup>1</sup> Caitlin Peterson, Ellen Hanak, Zaire Joaquín Morales, *Replenishing Groundwater in the San Joaquin Valley: 2024 Update*, (San Francisco: PPIC, 2024), p. 21.

<sup>2</sup> Ellen Hanak, Jelena Jezdimirovic, Alvar Escriva-Bou, Andrew Ayres, *A Review of Groundwater Sustainability Plans in the San Joaquin Valley*, (San Francisco: PPIC, 2020),p. 6.

<sup>3</sup> Ibid, 1.

<sup>4</sup> Ellen Hanak, Spencer Cole, Greg Gartrell, Caitlin Peterson, *How Much Water Is Available for Recharge in the Central Valley?*, (San Francisco: PPIC, 2025), pp. 12 and 15.

managed. *We do not explore the potential for available water from large storms during drier years, which might offer more limited opportunities for recharge . . . . These situations are ripe for further analysis, given their potential for extending the active season for recharge and for enabling incremental progress even in years that are not classified as wet.* (Emphasis added).

***Governor Newsom Executive Orders and the 2023 Resources Trailer Bill Diverting Floodflows Without an Appropriative Right.***

In 2023, the state experienced a dramatic end to the recent drought when a series of atmospheric rivers brought heavy precipitation to the state that resulted in record-breaking water storage and snowpack levels. Unfortunately, this precipitation also resulted in extensive flood damage.

In response to the need to manage potentially destructive flood flows and to take advantage of excess water to help recharge depleted groundwater basins, Governor Newsom issued a series of executive orders in 2023 authorizing water agencies to divert excess floodflows from rivers and streams for the purposes of groundwater recharge without the need to obtain a water right so long as certain criteria were met (N-4-23 and N-7-23). Under these executive orders, these diversions were not subject to the California Environmental Quality Act (CEQA) or Lake and Streambed Alteration Agreement (LSAA) requirements. Previously a diverter would have had to apply to the State Water Board for a new water right permit or to change an existing water right permit. The State Water Board issues both a standard or temporary permit (good for 180 days) for diversions.

Between March and August 2023, under the terms of Executive Orders N-4-23 and N-7-23, 78 diversions of floodflows for groundwater recharge were conducted. Almost all were conducted in the San Joaquin Valley and Tulare Lake Basin, except for diversions by the Los Angeles Department of Water and Power in Inyo, Kern, and Los Angeles Counties.

The Newsom Administration sought to codify the executive orders through budget trailer bill language in 2023. Following negotiations between Senate and Assembly leadership and the administration, provisions codifying the ability to divert floodflows for groundwater recharge without an appropriative water right in certain conditions were included in that year's public resources trailer bill, SB 122 (Committee on Budget and Fiscal Review, Chapter 51, Statutes of 2023).

SB 122 made various changes to the Executive Orders, 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 and applying CEQA and LSAA requirements. 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. The protective screens must be constructed of anytemp rigid material, perforated, woven, or slotted that allows water to pass while physically excluding fish. In addition, a protective screen must be parallel to the flow of water and adjacent to the water's edge and meet other specified criteria.

In January 2025, Governor Newsom issued EO N-16-25 which waived the requirement under SB 122 for certain counties (“proclaimed drought counties”) to have flood thresholds that trigger conditions for diversion be defined in a local plan of flood control or general plan.

Pursuant to SB 122, a diverter of floodflows is required to report certain information to the State Water Board, and the State Water Board is required to post all received diversion reports. According to the State Water Board’s website, 3 diversion reports were submitted in 2025 - 2 in Sacramento County and 1 in Yolo County. This year, 2 diversion reports have been filed – 1 in Sutter County and 1 in Butte County.

This bill codifies the waiver from EO N-16-25 and applies it to all counties, exempts the diversions from CEQA and LSAA requirements, and expands this diversion process so that “floodflow” includes flows released for flood control purposes, “imminent” is not tied to a condition happening in the immediate future, and permits diversions if the Delta is in “excess water conditions” and other conditions are met.

***Temporary permits for groundwater recharge.***

*180-day temporary urgency permits.* Obtaining a permanent water right can take a long time, so several groundwater recharge projects in recent years have opted for temporary urgency (180-day) permits. Since 2015, the State Water Board has received 55 applications for 180-day temporary permits for groundwater recharge and approved 46 of those applications. Many of these applications have received a CEQA exemption due to various drought executive orders and have used the 90/20 method, described in more detail below, to determine water availability. This bill provides 180-day temporary urgency permits with a statutory CEQA and LSAA exemption, subjects permits to restrictions based on Delta operations, and limits the fees the State Water Board can assess for applications for these permits, among other provisions.

*Five-year temporary permits.* AB 658 (Arambula) established a five-year temporary permit for groundwater recharge in 2019. Since that time, the State Water Board has issued nine five-year permits. On March 10, 2026, the Assembly Water, Parks, and Wildlife Committee held an Outcomes Review hearing on AB 658 which 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.

**Permanent permits.** The State Water Board issues a variety of “permanent” water permits, or permits to appropriate water. One type of permanent permit is a “minor application.” A minor application is either:

- (a) Any application that does not involve direct diversions in excess of 3 cubic feet per second of storage in excess of 200 acre-feet per year, or
- (b) An application by a GSA for a diversion previously authorized by a 180-day temporary urgency permit.

This bill would expand the definition of a minor application to include a diversion that is substantially similar to a diversion previously authorized by temporary permit for at least 5 years if it involves no greater amount of diversion, and no other points of diversion.

**Water availability analysis.** 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 §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 is the method the State Water Board uses to determine whether there is enough water to divert. Generally, it states that water is available for diversion on a given day if the instream flow exceeds the flow that typically occurs in 90% of the years but only up to 20% of the total flow at that time. 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.

### ***Sacramento Valley Flood Diversion and Recharge Enhancement Working Group (Sac Valley Recharge Group)***

The Sac Valley Recharge Group originated out of Executive Order N-16-25 and is funded by the Department of Water Resources (DWR). According to information provided by one of the sponsors, participants include conservation groups, engineers, landowners and water rights holders, and government employees. EO N-16-25 directed DWR, the State Water Board, the Natural Resources Agency, and the Environmental Protection Agency to “identify any obstacles that would hinder efforts to maximize diversions to storage of excess flows that become available as a result of the anticipated winter storms, to remove or minimize such obstacles whenever possible, and to promptly report to [Governor Newsom’s] office any additional statutory or regulatory barriers that should be considered for suspension.”

This bill includes some of the recommendations from the Sac Valley Recharge Group. It does not appear that the State Water Board was a part of the Sac Valley Recharge Group. It is further unknown if the State Water Board, as the entity which would play a significant role in implementing these recommendations, participated in the discussion and development of the recommendations into this legislative bill proposal.

**Existing law:**

- 1) Establishes the State Water Board to administer California's water rights system. (Water Code (WAT.) §1250 *et seq.*). Authorizes the State Water Board to issue water rights, collect data on water use under water rights, enforce water right violations, and enforce the water right priority system, among other powers. (WAT §§1250 *et seq.*, §§5100 *et seq.*, §§1845 *et seq.*, §§1450 *et seq.*).
- 2) Authorizes the State Water Board to reconsider its decisions or orders on its own motion or that of an interested party that has filed a petition for reconsideration. A petition for reconsideration must be filed within 30 days of the State Water Board's decision and the State Water Board must approve or deny the petition for reconsideration within 90 days. (WAT. §§1122 *et seq.*).
- 3) Authorizes the State Water Board to declare that a stream, lake, or other body of water is fully appropriated. A notice and hearing must occur before a declaration that a stream is fully appropriated and the State Water Board must find that water in the stream system is being fully applied to beneficial uses and that no water remains available for appropriation from the stream system. Upon its own motion or a petition of an interested party, the State Water Board may revoke or revise a declaration that a stream system is fully appropriated. Once a stream system is declared fully appropriated, the State Water Board shall not accept any applications to appropriate water from the fully appropriated stream system. (WAT. §§1205 and 1206).
- 4) Exempts the temporary diversion of floodflows for groundwater recharge from requirements to obtain a water right if specified conditions are met. (WAT. §1242.1).
- 5) Provides that the State Water Board does not need to conduct a field investigation on a minor application to appropriate water. Defines minor application as one that does not involve the direct diversion in excess of 3 cubic feet per second or storage in excess of 200 AF per year or an application by a GSA or local agency for a diversion previously authorized by a five-year temporary permit to divert water to underground storage. (WAT. §§1345 *et seq.*)
- 6) Authorizes the State Water Board to issue a temporary urgency permit (water right) so long as the diversion does not harm other lawful users of water and meets other conditions. Temporary urgency permits shall automatically expire after 180 days, unless renewed. (WAT. §§1425 *et seq.*).
- 7) Authorizes the State Water Board to issue a temporary permit (water right) to divert water for groundwater recharge so long as the diversion does not harm other lawful users and meets other conditions. Temporary permits for groundwater recharge shall automatically expire after 5 years, unless renewed. (WAT. §§1433 *et seq.*)
- 8) Under CEQA,
  - a) Requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration (ND), mitigated ND, or a environmental impact report (EIR) for this action, unless the project is

exempt from CEQA. (Public Resources Code (PRC) §§21000 *et seq.*).

- b) 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).
  - c) 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).
  - d) Requires compliance with AB 52 requirements which requires, prior to the release of an EIR, mitigated ND, 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:
    - i) 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
    - ii) 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).
  - e) 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).
- 9) Under LSAA requirements, requires an entity to notify CDFW before commencing any activity that may substantially alter a streambed. (Fish and Game Code (FGC) §1602)
- a) CDFW may enter into Lake and Streambed Alteration Agreements, which permit activities that alter a streambed if reasonable measures to protect fish and wildlife resources are included.

## **PROPOSED LAW**

This bill would expand the application of temporary diversion of floodflows for groundwater recharge without an appropriative water right, expand permanent minor protested applications to include prior diversions pursuant to a 180-day urgency permit, and expand the application for minor protested applications, 180-day urgency permits,

and 5-year permit for underground storage. Specifically,

- 1) For the temporary diversion of floodflows for groundwater recharge without a water right (pursuant to WAT §1242.1):
  - a) Apply these temporary diversion of floodflows provisions to diversions commenced before January 1, 2034, instead of January 1, 2029.
  - b) Delete the requirement that a local or regional agency must have adopted a local plan of flood control or generally that considers flood risk in order to provide notice that there is an imminent risk of flooding and instead require the local or regional agency be “responsible for flood management” in order to provide such notice.
  - c) Expand the definition of “floodflow” to include “flows occurring downstream of a dam that is releasing water for flood control purposes as required by the United States Army Corps of Engineers flood control rule or curve, a court judgement, or other binding rule., if those releases exceed the claims of all known legal users and may be diverted without injury to any lawful user of water and are diverted using existing points of diversion.”
  - d) Modify the definition of “imminent” to mean a high degree of confidence that flooding and inundation will occur if flood management actions are not implemented (instead of that the condition will begin in the immediate future).
  - e) Provide that “excess water conditions” are determined pursuant to the Agreement Between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and State Water Project, as amended.
  - f) For a diversion from the San Joaquin River or its tributaries upstream of Vernalis, authorize water to be diverted only when the Delta is in excess water conditions and the Delta is without restrictions.
  - g) For all other diversions from the Delta or its tributaries, authorize water to be diverted from the Delta only when the Delta is in excess water conditions and if:
    - i) The Delta is without restrictions; or
    - ii) The Delta is with restrictions, but Delta operations are only controlled by Old and Middle River flow or San Joaquin River inflow-to-export ratio. “Controlled by Old and Middle River flow” means conditions when the Central Valey Project (CVP) and the State Water Project (SWP) are implementing one or more regulatory requirements by managing flows in Old and Middle River.
  - h) For diversions from water tributaries to the Sacramento-San Joaquin Delta, from the San Joaquin River or its tributaries upstream of Vernalis, and any other diversions from the Delta or its tributaries, require the diverter to monitor conditions daily using the Delta Operations Summary report to determine the

Delta's condition and whether diversions are authorized

- i) Prohibit the above-described diversions for groundwater recharge from creating a vested water right to divert, even of a temporary nature. This limitation is on the authorization to divert and not a limitation on the authorization for beneficial use of the water diverted to underground storage.
  - j) In a groundwater basin being managed by a groundwater sustainability plan, as specified, authorize the groundwater sustainability agency to grant a person or entity making a diversion an allocation credit, as specified.
  - k) Exempt the above-described diversion of floodflow for groundwater recharge from CEQA.
  - l) Exempt the diversion of floodflows for groundwater recharge from LSAA requirements.
  - m) Require a lead agency to provide notice and consult with California Native American tribes, as specified, and authorize a decisionmaking authority to impose conditions of approval as part of the action to avoid or mitigate potential impacts to tribal cultural resources.
- 2) For minor applications to divert water to underground storage within or upstream of the Delta pursuant to a minor protested application (WAT. §§1348 *et seq.*), a 180-day temporary urgency permit (WAT. §§1428 *et seq.*), or a five-year temporary permit (WAT. §§1433 *et seq.*):
- a) Provide that the inclusion of the following permit terms shall satisfy the State Water Board's finding that a diversion will not injure legal uses of water from CVP or SWP:
    - i) For diversions from the San Joaquin River or its tributaries, water may only be diverted when the Delta is in excess conditions without restrictions; and
    - ii) 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.
  - b) Require a permittee to monitor conditions daily using the Delta Operations Summary Report published on DWR's website to determine the Delta's condition.
  - c) Authorize a permittee to divert water from the Delta or a tributary to the Delta without regard to Delta conditions restrictions and the applicable water availability analysis if the permittee has an agreement with DWR and, as necessary, the U.S. Bureau of Reclamation to ensure the permittee's diversions from or upstream of the Delta do not injure DWR or the U.S. Bureau of Reclamation by adversely impacting the operations of the SWP or CVP.

- d) Authorize a permittee to divert water from the Delta or upstream of the Delta without regard to Delta conditions or restrictions if the diversion has a de minimis effect on operations of SWP or CVP.
  - e) Define “De minimis effect” as a cumulative reduction less than 10 AF in a single water year (October 1 through September 30).
  - f) Define “Delta is with restrictions” as when CVP and SWP operations in the Delta are constrained by any nondiscretionary requirement, including for protection of water quality and endangered species.
  - g) Define “Delta is without restrictions” as when CVP and SWP operations in the Delta are not constrained by any nondiscretionary requirements, including for protection of water quality and endangered species.
  - h) Define “Delta operations” as operations by which CVP and SWP divert water from the Delta.
  - i) Define “excess water conditions” as those determined by the “Agreement Between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and the State water Project,” (COA) and as that agreement may be amended.
- 3) For a minor protested application to divert water to underground storage (WAT. §§1345 *et seq.*):
- a) Expand minor applications to:
    - i) Include an applicant that is a private entity pursuant to a memorandum of understanding with a GSA.
    - ii) Include a diversion that is substantially similar to a diversion previously authorized by a temporary 180-day urgency permit for at least 5 years, and the diversion involves no greater amount of diversion and no other points of diversion.
  - b) Provide that the State Water Board is not required to conduct a field investigation for the expanded scope of “minor applications” or if the application involves the substantially similar diversion described in a-ii, above, and includes the following information:
    - i) Consistent with SGMA, documentation of consistency of the proposed diversion and recharge with the applicable GSP.
    - ii) Documentation showing:
      - (1) The applicant consulted with CDFW concerning the diversion’s effects on fish, wildlife, and other instream beneficial uses, and

- (2) The applicant provided CDFW with a copy of the application.
  - iii) Proposed terms that address potential effects of fish, wildlife, or other instream beneficial uses identified through the applicants consultation with CDFW.
- c) For minor applications involving substantially similar prior diversions described in (a)(ii), require the State Water Board to do the following:
- i) Give public notice of the application within 30 days of the filing and allow 45 days from the date of notice for comments. The State Water Board may extend the time up to 30 days for good cause based on unique circumstances.
  - ii) Issue a decision on the application within 180 days after the deadline for submitting comments and authorize the State Water Board to delegate the authority to issue a decision to the Division of Water Rights, subject to the State Water Board's reconsideration of the division's decision.
  - iii) Approve the application if it is determined that a preponderance of evidence shows:
    - (1) The proposed diversion would not injure any legal user of water through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows; and
    - (2) The proposed diversion would not unreasonably affect fish, wildlife, or other instream beneficial uses.
  - iv) If the State Water Board determines that a preponderance of evidence does not support the findings described in (iii), above, require the State Water Board to, to the maximum extent possible, approve the application based on terms the State Water Board determines will satisfy (iii). Prohibit the State Water Board from conditioning any permit on any terms involving another permit, license, or water right held by the applicant or to mitigate impacts not caused by the diversion,
  - v) Prohibit the State Water Board from requiring separate applications for consumptive (e.g. irrigation) and nonconsumptive (e.g. reduced land subsidence) uses of water.
  - vi) Exempt the issuance of a minor application permit from CEQA and LSAA requirements if the diversions occur through either:
    - (1) Existing diversion infrastructure; or
    - (2) Temporary facilities that do not require construction, and, if they divert directly from a river or stream, have protective screens on their intakes to minimize the impacts of diversion to fish and other aquatic life, with those screens being constructed of any rigid materials, perforated, woven, or

slotted, that provides water passage while physically excluding fish.

- vii) Regardless if the issuance of the minor application is exempt from CEQA, require a lead agency to provide notice and consult with California Native American Tribes consistent with AB 52 requirements before issuing a permit. A decisionmaking authority is authorized to impose conditions on the issuance of the permit to avoid or mitigate potential impacts to tribal cultural resources.
  - viii) Authorize the State Water Board to consider a minor application on a river or stream that the State Water Board has designated as “fully appropriated,” as specified.
  - ix) Require the State Water Board to set fees for minor applications at a level that encourages those applications. Prohibit the State Water Board from requiring separate applications or fees for consumptive and nonconsumptive uses of diverted water.
- 4) For applications to divert water to underground storage pursuant to a 180-day temporary urgency permit (WAT §§1425 *et seq.*) or a five-year temporary permit for diversion to underground storage (WAT §§1433 *et seq.*) and determining the availability of water:
- a) Require the State Water Board to use the “flood/recharge diversion criteria” for an application to divert water from the Sacramento River or its tributaries upstream of the Delta, except that the flood/recharge diversion criteria does not apply to an application for diversion from a river reach that is upstream of a major rim dam. Require the State Water Board to apply location-specific diversion criteria for other areas of the state and apply the 90/20 method where it is not possible to use location-specific diversion criteria.
    - i) Define “flood/recharge diversion criteria” as the method for calculating water availability for the Sacramento River and its tributaries upstream of the Delta, pursuant to which water is available for diversion for recharge and beneficial uses between December 1 to March 31 within a water year when, on the date of measurement, cumulative runoff as of that date exceeds the 80<sup>th</sup> percentile of historical cumulative water year runoff at the point of the diversion and lasting until that cumulative water year runoff is lower than the 50<sup>th</sup> percentile of historical cumulative runoff at the point of diversion, as measured against the historical cumulative water year runoff measured on that date.
    - ii) Define “location-specific diversion criteria” to mean criteria for determining the water available for diversion pursuant to methods other than the 90/20 method or the flood/recharge diversion criteria that contain certain components.
    - iii) Define “major rim dam” to mean Shasta Dam, Oroville Dam, Folsom Dam, Englebright Dam, Camp Far West Dam, Indian valley Dam, Cache Creek Dam, Black Butte am, and Monticello Dam.

- b) Require the State Water Board to adopt emergency regulations detailing the 90/20 method and require those emergency regulations to remain in effect until revised by the State Water Board.
    - i) Exempt the adoption of these emergency regulations from CEQA but require the lead agency to provide notice and consult with California Native American tribes in accordance with existing AB 52 requirements. Authorize a decision making authority to impose conditions of approval as part of action to avoid or mitigate potential impacts to tribal cultural resources.
- 5) For 180-day temporary urgency permits: (WAT §§1425 *et seq.*)
- a) Add to the findings the State Water Board is required to make before using a permit to include that the proposed diversion will support the application of water to one or more beneficial uses, which may include recharge beneficial uses.
  - b) Expand “urgent need” to include, for basins that require a GSP, applications to divert and use available water to augment the basin’s recharge to support the implementation of the basin’s sustainability goal.
  - c) Authorize the diversions to be initiated after the permit’s issuance, if the diversions are authorized only for 180-days after diversions commence.
  - d) Exempt these permits from CEQA and LSAA requirements if the diversions occur through either:
    - i) Existing diversion infrastructure, or
    - ii) Temporary facilities that do not require construction, and, if the facilities divert directly from a river or stream, the facilities have protective screens on their intakes to minimize the impacts to fish and other aquatic life, as specified.
  - e) Regardless if CEQA applies, require the lead agency to provide notice and consult with California Native American tribes in accordance with AB 52 requirements and authorizes a decision making authority to impose conditions of approval to avoid or mitigate potential impacts to tribal cultural resources.
  - f) Require the State Water Board to set fees at a level that encourages those applications. The State Water Board would be prohibited from requiring separate applications or fees for consumptive and nonconsumptive uses of diverted water.
  - g) Authorize urgent temporary permits to be accepted for process in accordance with the process for 5-year temporary permit for diversion to groundwater recharge if the diversion is proposed on a certain stream of stream segment and the applicant proposed to operate pursuant to the applicable diversion criteria.
    - i) The State Water Board may authorize the diversion of these temporary urgency permits to be initiated more than 180 days after the date of issuance, except that the authorization to divert automatically expires 5-years after diversions commence. The applicant is required to require approval of a

delayed implementation period as a part of the initial filing.

- ii) Authorize the Chief Deputy Director of Water Rights to limit diversions under urgent temporary permits that are processed as temporary permits for diversion to groundwater recharge in favor of competing temporary permits based on consideration of public interest.
  - iii) Authorize these temporary permits to be changed, upon request, including as to locations of recharge or purposes of use.
- 6) For five-year temporary permits for diversion to underground storage (WAT §§1433 *et seq.*):
- a) Removes authority of the State Water Board to establish accounting methods and reporting requirements.
  - b) Require the State Water Board to find that there is an availability of water, as specified, before issuing a permit.
  - c) Exempt the State Water Board's issuance of these permits from CEQA and LSAA requirements if the diversions occur through either:
    - i) Existing diversion infrastructure, or
    - ii) Temporary facilities that do not require construction, and, if the facilities divert directly from a river or stream, have protective screens on their intakes to minimize the impacts of diversions to fish and other aquatic life, as specified.
  - d) Regardless if CEQA applies, require a lead agency to provide notice to and consult with California Native American tribes in accordance with existing requirements and authorizes a decision making authority to impose conditions of approval to avoid or mitigate potential impacts to tribal cultural resources.
  - e) Require the State Water Board to set fees at a level that encourages these applications. The bill would prohibit the State Water Board from requiring separate applications or fees for consumptive and nonconsumptive uses of diverted water.
  - f) Permits the application to include a demonstration of the availability of water instead of a water availability analysis or simplified water availability analysis that is currently required under existing law.
- 7) Make various findings and declarations relating to groundwater recharge.

### **ARGUMENTS IN SUPPORT**

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. 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, all communities benefit. Adapting our groundwater recharge strategy will help provide stability for California in a time of water extremes.”

**ARGUMENTS IN OPPOSITION**

According to the Defenders of Wildlife, “this bill is codifying Trump administration policies on water management in the Delta” and the “bill’s proposed changes to Bay-Delta diversion criteria in Sections 2 and 3 of the bill, are referencing Trump-era policies and exacerbating a degraded baseline of protection for an Estuary that is in severe decline.” The group further argues that the bill’s redefinition of “floodflows” is overly broad and “will allow diversions of flows that are critical to satisfy environmental rules water quality rules, or even public health and safety” and “changes cessation of diversions for [GSAs] without adequate protection for water rights holders or public trust resources.

**COMMENTS**

***This bill is double referred.*** This bill is double referred with the Senate Environmental Quality Committee, with this committee being the committee of first referral. Elements of this bill under the jurisdiction of the Senate Environmental Quality Committee are included here for context and completeness only and will be discussed before that Committee.

***The big picture.***

This bill would modify the processes for 4 existing water diversion processes, many intertwined, with overlapping criteria or references to each other. To help provide a general overview, the chart below has been developed.

	Diverting floodflows without an appropriative right (WAT 1242.1)	Minor protested applications to divert water (permanent). Also includes minor applications based on temporary applications)	180-day urgent applications (temporary)	5-year applications to divert for underground storage (temporary)
Requires “excess water conditions”	Yes	Yes	Yes	Yes
Requires application of “flood/recharge diversion criteria”	No	Yes	Yes	Yes
CEQA applies	No	No	No	No
LSAA applies	No	No	No	No
CDFW consultation	No	Yes (existing law)	Yes (existing law)	Yes (existing law)
State Water Board finding that no unreasonable effect on fish and	No (existing law)	Yes	Yes (existing law)	Yes (existing law)

wildlife				
AB 52 tribal consultation required	Yes	Yes	Yes	Yes

**Increasing diversions from the Delta.** These include:

- Expanding the SB 122 process (proposed WAT §1242.1, see below).
- Allowing diversions when the Delta is in “excess water conditions” and the Delta is either (1) without restrictions; or (2) with restrictions but Delta operations are controlled by Old and Middle River flow or San Joaquin River inflow-to-export ratio. This threshold would apply to diversions without an appropriative right (SB 122 process), diversions to underground storage pursuant to a minor application (proposed WAT §1267), a 180-day urgency permit (proposed WAT §1267), and a 5-year permit for diversion to underground storage (proposed WAT §1267).
- Allowing diversion regardless of Delta conditions if there is an agreement between DWR and the Bureau of Reclamation (proposed WAT §1267(b)). However, who ensures it is a valid agreement? Who ensures the diversion would not impact other water rights holders?
- Potentially allowing minor application diversions (which could include diversions more than 3 cubic feet per second or 200 AF of storage per year if the application is based on a prior 180-day urgent permit or 5-year diversion for underground storage permit) from a stream that the State Water Board has declared is fully appropriated if there is an agreement between water suppliers and a nonprofit organization (proposed WAT §1347(b)(7)). This allowance is also given for 180-day urgency permits and 5-year permits for diversion to underground storage (proposed WAT §1422). It is noted that the State Water Board still has discretion whether to approve these permits. However, what happens if the agreement is later violated after the permit is issued? Should it be the State Water Board’s responsibility to ensure that agreements continue to be honored?
- Requiring the State Water Board to use the “flood/recharge diversion criteria” when determining the availability of water when issuing a 180-day urgency permit or 5-year diversion for underground storage permit (proposed WAT §1422(a)(1)).

**This bill expands SB 122.** The original intent of SB 122 (WAT §1242.1) was to statutorily create a process to divert floodflows in order to prevent damage to life and property without having to get an appropriative right from the State Water Board, while also contributing to groundwater recharge. This bill expands SB 122 in a number of ways.

**Changing the definition of “imminent.”** Existing law defines “imminent,” for purposes of Water Code §1242.1, as “a high degree of confidence that a condition will begin in the immediate future.” AB 2026 would amend the definition of imminent to mean “a high degree of confidence that flooding and inundation will occur if flood management actions are not implemented.

According to the sponsors, this change was made because “immediate” has been interpreted to mean that a flood is already happening and the change is intended to

allow entities the opportunity to adequately prepare to divert the floodflows. However, this proposed definition does not indicate any temporal relationship between the actions being taken and when the flooding is expected to happen. In theory, a diversion could be allowed, assuming all other conditions are met, as long as flooding and inundation will occur at some point in time, not necessarily anytime soon.

In order to give entities more flexibility than the current interpretation of “immediate,” but still ensure that floodflow diversions are only occurring when there is an impending risk of flooding and inundation, the Committee may wish to amend the bill to require that imminent mean “a high degree of confidence that flooding and inundation will occur within 72 hours if flood management actions are not implemented. See *Amendment #1*.

*Changing which entities can give notice of floodflows.* AB 2026 changes the local or regional agency which give notice of floodflows from a local or regional agency that has adopted a local plan of flood control or has considered flood risk as part of its general plan to a local or regional agency responsible for flood management. This expands which entities can give notice and thus also expands the circumstances under which this process can be utilized. According to the author’s office, the reason for this change is that rural areas were unable to utilize this process because the smaller agencies do not have the resources to be able to produce a flood control plan, but do issue flood warnings. This change was also in EO N-26-25.

However, groups have expressed concern that this change would allow agencies with little flood management expertise or responsibility to give notice and would allow multiple agencies to make a flood declaration for a specific river reach, with no requirement to coordinate, creating potential for multiple conflicting declarations.

*Expands definition of “floodflow”* to include “flows occurring downstream of a dam that is releasing water for flood control purposes”, as specified, which also expands the circumstances under which this process can be utilized. However, when a dam releases water for “flood control purposes,” it is not always because there is an actual risk of flooding. 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 flood control rule or curve, court judgment, or other binding rule.

According to the author and sponsors, it is intended that these releases are only considered floodflows when the releases result in an imminent risk of flooding and inundation of land, roads, or structures. Additionally, the sponsors have argued that it is appropriate that this water be available for diversion because it is “extra” water in the system and are not needed for environmental or other purposes. However, some flood releases are done in coordination with salmon seasons and diverting that water would actually defeat the purpose of the timing of that flood release.

Thus, in order to effectuate the intent to only capture flood releases that result in flooding and are not needed for environmental purposes the Committee may amend the bill to clarify this intent. *See Amendment #2*

*Requires tribal consultation.* AB 2026 requires that the local or regional entity providing notice to consult with California Native American tribes in accordance with existing processes. While tribal consultation is important, it is unclear how long these consultations typically take and whether they can be completed before flooding is anticipated to occur.

*Allows additional diversions when from the Delta when the Delta is in “excess water conditions” and other conditions apply.* This bill increases the amount of water that is allowed to be diverted from the Delta.

*Potentially creates a right for the diverter to later use the diverted floodflows.* Proposed subdivision (f) states “Diversion for groundwater recharge pursuant to this section shall not create a vested right to divert, even of a temporary nature. This limitation is on the authorization to divert and not a limitation on the authorization for beneficial use of the water diverted to underground storage.” This, combined with the striking of former subdivision (f), which read “The person or entity making the diversion for groundwater recharge does not claim any water right based on that diversion and recharge” implies that this process could create a water right for the diverter in the water diverted. According to the sponsor, the intent of this statement is not necessarily to create a water right but to allow the diverter to later access and use that water if it is consistent with a GSP.

A concern has been raised that this allocation credit may incentivize flood agencies to more readily make a flood determination, or entities to divert larger volumes of floodflows that could be ecologically important.

*Exempts diversions under this section from CEQA and LSAA requirements.* Although Executive Orders N-4-23 and N-7-23, the Executive Orders that were the impetus for SB 122, SB 122 specifically did not include these exemptions.

***Aligning the State’s management of the Delta to current federal administration policies.*** In general, AB 2026 allows diversion from the Delta in two situations: (1) if a diversion from the San Joaquin River or its tributaries upstream of Vernalis, if there are “excess water conditions” and the Delta is without restrictions, or (2) for all other diversions from the Delta or its tributaries, if the Delta is in “excess water conditions” and either (a) the Delta is without restrictions or (b) the Delta is in restrictions but the Delta operations are only “controlled by the Old and Middle River flow” or San Joaquin River inflow-to-export ratio (Other criteria may also apply depending whether it is a diversion of floodflow without an appropriative right, or a diversion pursuant to a minor protested application, a 180-day urgent application, or a 5-year diversion for underground storage).

Under the bill “excess water conditions” “are determined pursuant to the Agreement Between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and the State Water Project, as amended.” This

is often referred to as the COA and includes coordinated project operations of the CVP and SWP.

“Controlled by Old and Middle River flow” is defined by AB 2026 as “conditions when the Central Valley Project, and the State water Project are implementing one or more regulatory requirements by managing flows in Old and Middle River, *whatever the source or content of those requirements is*” (emphasis added).

In January 2025, the Trump Administration released several Executive Orders pertaining to water management in California, including Executive Order 14181 (EO 14181), *Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas*.<sup>5</sup>

In December 2025, the Bureau of Reclamation amended the COA through “Action 5,” referencing EO 14181. In a comment letter from CDFW to the Bureau of Reclamation, CDFW stated that “Action 5 provides less protection for species than the 2019 and 2024 [biological opinions] for the Long-term Operations of the CVP and SWP . . . .” The letter also provided various examples of how Action 5 would negatively impact winter- and spring-run Chinook salmon and longfin smelt and delta smelt protections. Additionally, groups have expressed concern that Action 5 degrades Delta operating pumping criteria to unsustainable levels that harm fish and water quality by including Old and Middle River management at no more negative than -5,000 cubic feet per second and stormflex action of -6,500 cubic feet per second (Action 5, page 3).

Thus, an argument has been made that codifying COA, which currently is controlled by Action 5 and which includes provisions allowing diversions when Delta operations are controlled by Old and Middle River flow management, is also codifying current federal administration policies when it comes to the Delta.

It is noted that AB 2026 does refer to the COA, *as amended*. However, given the current federal administration priorities thus far, it is unlikely that the COA will be amended to be more protective of water quality and biological resources in the Delta and, instead, if further amendments are taken within the remaining 2 and half years will likely become less restrictive and lower water quality thresholds and species protections further.

While the sponsors have argued that this language is already often used by the State Water Board when issuing permits, this bill takes it one step further and seems to tie the State Water Board to using these exact conditions, and nothing more. If the State Water Board wanted to impose additional requirements or conditions to address water quality concerns and protect public trust resources, it is unclear if it would be able to do so.

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<sup>5</sup> In January 2025, the Newsom Administration released Executive Order N-16-25 that similarly ordered DWR to “maximize diversions of excess flows” and all agencies to “identify any obstacles that would hinder efforts to maximize diversions to storage of excess flows. While some groups applauded the Governor, others likened it to Present Trumps Executive Order. <https://mavensnotebook.com/2025/01/31/governor-newsom-issues-executive-order-to-help-california-capture-and-store-more-water-from-upcoming-severe-storms/>

The author may wish to consider whether it is appropriate to statutorily tie California's water management policies of the Delta to current federal administration policies, which may impact the State Water Board's ability to uphold state priorities regarding water quality, protection of fish and wildlife, and public trust resources that go above the minimum that is set by federal law. If the author does not think it is appropriate, the author may wish to amend the bill to indicate as such.

***Development of "Flood/recharge diversion criteria" should be transparent and include public participation.***

Under AB 2026, an entity can divert between December 1 and March 1 if the cumulative unimpaired runoff, as of the date of measurement, exceeds the 80<sup>th</sup> percentile of historical cumulative water year runoff and can continue to divert until the cumulative water year runoff is lower than the 50<sup>th</sup> percentile of historical cumulative runoff at the diversion point as compared to the historical cumulative water year runoff measured as of that date. Further, the total amount of water cannot be "greater than 20 percent of the daily flow after bypass of the California Environmental Flows Framework median wet season baseflow and after downstream senior diverter demand is satisfied (See proposed definition of "flood/recharge diversion criteria in Section 1467(e))."

***Background on flood/recharge diversion criteria.*** According to the author and bill sponsors, this definition comes from a recommendation made by Sac Valley Recharge Group, which is funded by DWR. The group recommended that DWR, among other things, provide assistance for developing alternative diversion criteria for areas where the 90/20 method is not feasible or too restrictive. MBK Engineers were brought in to collaborate with the Sac Valley Recharge Group to develop the "flood/recharge diversion criteria," as proposed by the bill. According to the sponsors, this flood/recharge diversion criteria relies on a cumulative analysis, as opposed to the daily analysis that is used in the 90/20 method, which allows for a holistic analysis of what water is available on the ground from which to make permitting decisions. It is unclear what parameters were used in the development of these criteria and whether there was an opportunity for public participation or peer review. Additionally, it does not appear that the State Water Board was a part of the Sac Valley Recharge Group.

***Cumulative analysis.*** The diversion criteria rely on a cumulative analysis, however this may be an improper approach as a cumulative analysis doesn't take into consideration "swings" in flow. For instance, even if there is a very wet winter, there may be low flows in the spring or summer. This can happen in instances where a wet winter leads to lots of snowpack, but an unseasonably warm late winter can melt or evaporate that snowpack early, leading to low flows in the spring or summer. Although the sponsors view this cumulative analysis as more appropriate than the "on-the-ground" conditions that are currently used by the State Water Board's 90/20 method, a concern is raised that this may capture too broad of a timeframe, potentially skewing whether streams are actually experiencing wet or dry conditions. Particularly in the context of smaller streams, where flows can fluctuate rapidly in response to rainfall, the cumulative analysis could allow diversions from a small stream that has actually returned to its "normal" conditions. Additionally, it is unclear how a cumulative approach would impact the water of other water rights holders.

In response, the sponsors argue that the criteria only applies north of the Delta, whereas the “flashiest” or driest streams are located in the South. Additionally, the criteria only applies to downstream of major rim dams, which have very wet conditions.

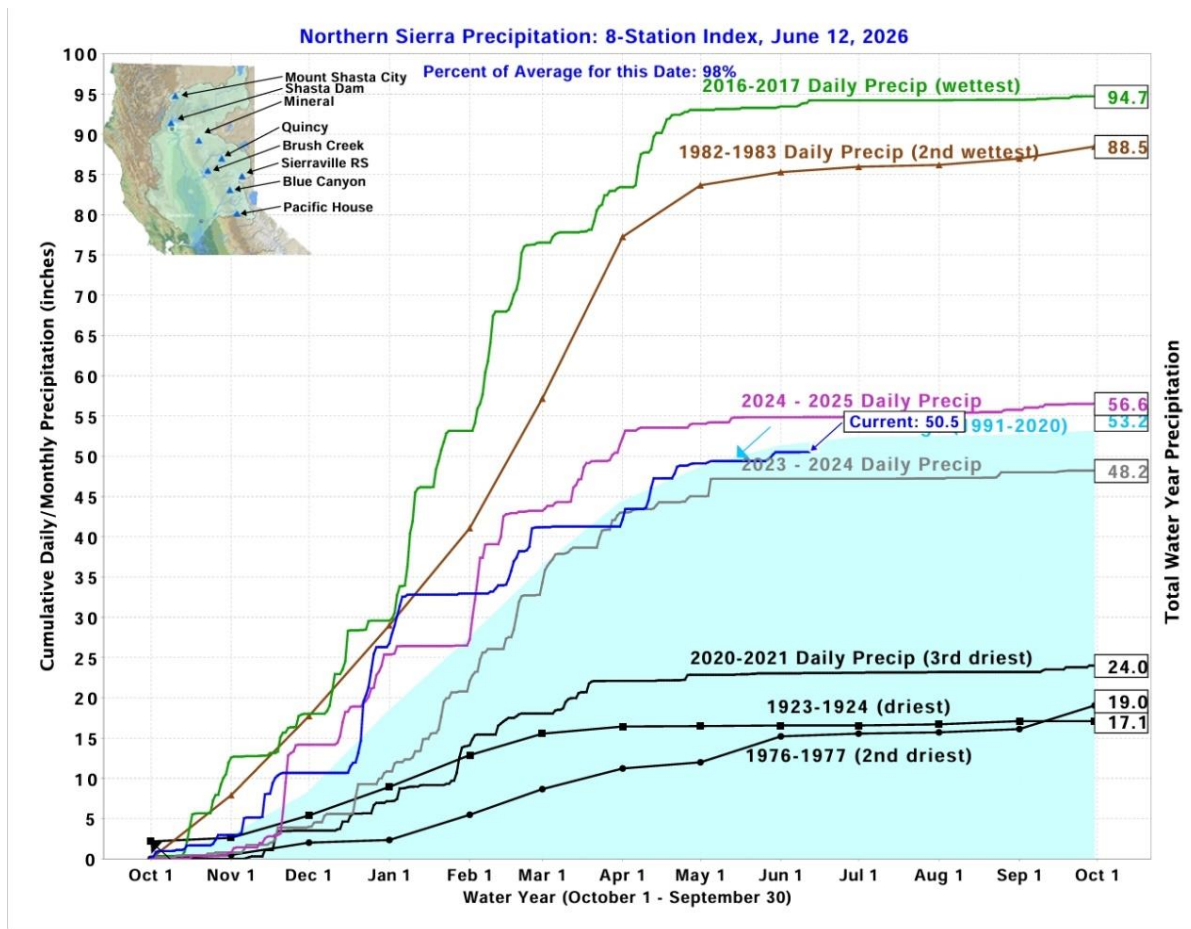
*California Environmental Flows Framework (CEFF Framework or Framework).*

Additionally, according to the sponsors, the criteria is still flexible and utilizes the CEFF Framework. The Framework was developed by UC Davis in consultation with other nongovernmental organizations, with funding from the State Water Board. According to the CEFF website, it is a management approach that provides technical guidance to help managers efficiently develop scientifically defensible environmental flow recommendations. The Framework provides specific steps, tools, and methods that are useful for developing environmental flow recommendations.

According to the author’s staff, the CEFF Framework language in the criteria restricts the total amount of water diverted to less than 20% of the daily flow after the environmental needs determined by the Framework and needs of senior water right users are satisfied. This 20% limitation is included to protect public trust resources and is similar to the current 90/20 method that is utilized by the State Water Board.

It is unclear if CEFF was intended to be used as proposed by this bill or, as suggested by some groups, that the Framework should be used with state involvement and a public process.

*Application of flood/recharge diversion criteria.* The graph below provides a representation for how new diversions would be authorized, although it shows slightly different data than what the bill would authorize. The graph below shows the total cumulative *precipitation* of the current water year, past water years, and the average daily precipitation between 1991 and 2020. The proposed methodology in the bill would rely on cumulative *streamflow* at a given location (point of diversion).



[https://cdec.water.ca.gov/reportapp/javareports?name=PLOT\\_ESI.pdf](https://cdec.water.ca.gov/reportapp/javareports?name=PLOT_ESI.pdf); accessed June 12, 2026

The current water year’s precipitation levels are represented by the dark blue line, and the average daily precipitation level (approximately the 50<sup>th</sup> percentile) between 1991 and 2020 is indicated by the light blue shaded area. Cumulative streamflow would work in the same way – the light blue shaded area would represent approximately the 50<sup>th</sup> percentile, and cumulative flows at a given point would be the dark blue line. Applying the bill’s flood/recharge diversion criteria, diversion would be permitted if the dark blue line reached the 80<sup>th</sup> percentile on any date (note – the 80<sup>th</sup> percentile is not shown on the above graph, but it would be somewhere between the green line (100<sup>th</sup> percentile) and the light blue shaded region). Diversions could continue after that date so long as the daily cumulative flow did not enter within the light blue shaded area. In a sense, at that point diversion is no longer occurring purely when there are “high flows”, but more closely to when there are medium flows. It would maintain the status quo of runoff that is in the Delta. Many have argued that maintaining the status quo conditions is what is contributing to the Delta being in decline. Thus, this definition could potentially further contribute to the conditions that have put the Delta into decline.

The sponsors argue that their intent is to focus on periods when there are high flows in the system and the intent was to develop a method that would inform of water availability and diversions might be possible. Additionally, to ensure protection of public trust resources and downstream users, certain guardrails, such as limiting diversions to 20% and the minimum bypass requirements, were inserted.

But as discussed above, it is unclear if these guardrails will work.

A question arises, and the author may wish to consider, if it would be more appropriate to strike the current definition of “flood/recharge diversion criteria” and instead require the State Water Board to develop the method pursuant to emergency regulations, consistent with prescribed guardrails. This will ensure that appropriate flood/recharge diversion criteria are developed by the state agency that will be charged with implementing the criteria, ensure that other water rights are not impacted by the criteria, and provide public participation in its development. Additionally, it would provide flexibility to the State Water Board to update the method over time, as appropriate, based on new data or scientific approaches.

***Creating efficiencies in the process or shortcutting environmental review?*** AB 2026 contains various situations where CEQA or LSAA requirements do not apply. These include:

- Diverting floodflows without an appropriative right, if certain conditions are met (Wat. §1242.1)
- State Water Board issuance of a minor protested application (WAT §1347). This exemption also applies when a prior temporary application, whether a 180-day urgency permit or a 5-year permit for diversion to storage underground, is being used for a minor protested application. In some cases, those prior temporary permits may also have been issued without being subject to CEQA or LSAA requirements.
- State Water Board adoption of emergency regulations to implement the bill’s expansion for the issuance of 180-day urgency permits and 5-year permits for diversion to storage underground (WAT §1422). (CEQA exemption only).
- State Water Board issuance of 180-day urgency permit (proposed WAT §1425).
- State Water Board issuance of 5-year permit for diversion to storage underground (WAT §1433.1). It is noted these exemptions would also apply when the State Water Board is issuing a temporary permit for diversion to underground storage using a temporary 180-day urgency permit (which also could have been exempt from CEQA and LSAA requirements).

However although this bill proposes to statutorily exempt these processes from LSAA requirements, the following circumstances do, at least, require consultation with CDFW:

- The bill would require an applicant for a minor application to consult with CDFW and for the State Water Board to find that the diversion would not unreasonably affect fish, wildlife, or other instream beneficial uses.
- Existing law requires an applicant for a 5-year permit to consult with CDFW.
- Existing law requires the State Water Board to consult with CDFW before making certain findings and issuing 180-day urgency permit (WAT §1427).

Further, the sponsors point out that for minor applications, 180-day urgency permits, and 5-year diversion to underground storage permits the CEQA and LSAA exemption only applies if the diversions occur through either existing diversion infrastructure or temporary facilities. However, an LSAA takes more into account that existing or

temporary infrastructure and looks at the project's overall impacts, including disturbance to access roads and set up and disassembly of temporary facilities.

It is also worth noting that in some instances, a permit that was exempt from CEQA or LSAA requirements may later be submitted as a part of another permit application that is also exempt from CEQA or LSAA requirements. For example, a 180-day urgency permit is exempt from CEQA and LSAA under this bill, and can later used to apply for a 5-year diversion for underground storage permit, the issuance of which is also exempt from CEQA under this bill. Additionally, some of these processes have been subject to CEQA or LSAA exemptions pursuant to various executive orders, as discussed above, executive orders are often unilaterally issued without public participation.

The CEQA exemptions may be something covered by the Senate Environmental Quality Committee during its hearing on this bill.

***Exempting LSAA requirements.*** 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 CDFW 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, streak, or lake; or
- Deposit or dispose of material into any river, stream, or lake.

If CDFW 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 LSAA is required. An LSAA is a type of permit that includes mitigation measures necessary to protect fish and wildlife resources. Emergency work, such as those necessary to protect life or property, do not require an LSAA. This bill exempts from LSAA requirements 1242.1 diversions, minor applications, 180-day urgent temporary permits, and 5-year diversions for underground storage permits.

The sponsors have argued that the LSAA exemptions proposed by the bill were already in place due to executive orders. While the original Executive Order N-4-23 (issued March 2023) and N-7-23 (issued May 17, 2023) did exempt floodflows from LSAA requirements, they did not exempt minor applications, 180-day urgent permits, or 5-year diversions for underground storage permits. Additionally, often Executive Orders are unilateral decisions of the Governor, with very little public participation, due to urgent circumstances underlying the executive order that necessitate the need to act quickly. However, SB 122, which the Legislature passed later that summer, codified the executive orders but did not exempt diverting flood flows without an appropriative right from LSAA requirements. SB 122 was the result of a three-party agreement between the Senate, Assembly, and the Administration. Further, Executive Order N-16-25, which was issued to relax some of the requirements of SB 122, did not contain an LSAA exemption. EO N-7-23 and N-4-23 expired with the issuance of EO N-3-24 on September 4, 2024, also expiring the exemption from LSAA requirements.

The Legislature has acknowledged the importance of taking advantage of the opportunity to divert certain floodflows to recharge aquifers when there is opportunity to do so. While there is inherent variability when floodflows may be available to divert, it appears that it is possible for a public agency to obtain an LSAA in advance of anticipated diversions, particularly as potential recharge locations that meet required criteria in a given jurisdiction are not unlimited. The terms and conditions of the LSAAAs provide for surveys and best practices to limit adverse impacts to plants and wildlife from the proposed diversions. Where there are timeliness concerns related to how quickly an LSAA application can be processed, it is unclear that the most appropriate approach is waiving the applicability of LSAAAs rather than instead requiring accelerated processing of LSAA applications for certain projects, or other streamlined method of approval tailored for the particular vagaries of temporary diversions. Further, it may be that certain flexibility in the terms and conditions of LSAAAs for temporary diversions or some form of programmatic approach to permitting could also be responsive to the concerns this bill seeks to address.

In light of the LSAA exemptions in the bill, the Committee may wish to amend the bill as follows:

- For diversion of floodflows without an appropriative right (WAT §1242.1) require the person or entity making the diversion to contact CDFW to determine whether CDFW has recommendations for species protections and to consider implementing the recommendations to the extent possible. Would require CDFW's recommendations to be consistent with what is practical during floodflow conditions. *See Amendment #3.*
- For minor protested applications, 180-day permits and 5-year permits, reiterate that the State Water Board is required to consult with CDFW before making the finding that a proposed diversion would not unreasonably affect fish, wildlife or other instream beneficial uses. (Existing law already requires the State Board to consult with CDFW when considering an application for a temporary urgency permit). *See Amendments #5, 6, and 7.*

***Continued diversion reporting is appropriate.*** If Water Code Section 1242.1 is extended to apply to additional diversions that occur after January 1, 2029, it is also appropriate to extend the requirement that the State Water Board continue to compile the information of the associated authorized diversions received and post that information on its website.

The committee may wish to amend Water Code Section 1242.2. to require the State Water Board to compile the information of any reports received pursuant to Water Code Section 1242.1 to 2034. *See Amendment #4.*

***Maintaining legislative oversight.*** One way the Legislature maintains oversight over programs is through a sunset. This bill proposes various changes to existing processes, but, other than diversions of floodflows without an appropriative right, does not provide an opportunity for the Legislature “check-in” on the implementation of any of these expanded programs.

Additionally, it is customary in the event that a provision of law has a sunset date to require some form of legislative report or other information be available in advance of the sunset to inform any legislative discussion to extend the sunset.

The Committee may wish to amend the bill to insert a 2037 sunset on the changes made to the minor protested application processes, 180-day urgency temporary permit processes, and 5-year permit for underground storage processes that are being made by the bill and to require the State Water Board to provide information about the programs on its internet website two years prior to the sunset. *See Amendments # 8, 9, 10, and 11.*

***Additional considerations.*** Water is complex with many intertwining parts. A change in law to one area, may impact another area. While it is certainly important to set up good processes to encourage groundwater recharge, the development of such processes must be done diligently taking into consideration the state's water system holistically. For example:

- Whether allowing a prior temporary diversion permit to be used in applying for a minor application would allow the applicant to “leap frog” ahead of other water rights applicants and interfere with or prejudice other pending water rights proceedings.
- How would this bill interact with the anticipated update to the Bay Delta Water Quality Control Plan, which the State Water Board is currently in the process of updating? The proposed plan would include a program known as the Healthy Rivers and Landscapes program or “voluntary agreements.” If this bill is enacted, it is unclear how the diversions permitted under this bill would interact with those voluntary agreements. According to the sponsor, the intent is that this bill's framework will work within the updated Bay Delta Water Quality Control Plan, whether it includes voluntary agreements or not.
- Will the State Water Board be able to track diversions that are permitted under this bill, and potentially taking place simultaneously, to ensure there is enough water in the system to satisfy regulatory requirements? This may be difficult to track as the State Water Board may not have access to the necessary real time data for some diversions.

The Legislature may wish to consider these and more as the bill and other potential legislative proposals examine ways to divert water for groundwater recharge.

***This bill is a work in progress.*** This is a complicated bill, introducing very technical matters, with many provisions of the bill intertwined with one another. In some places, language is unclear or could be open to different interpretations. If language is unclear or open to different interpretations, it may make it difficult for the State Water Board to implement and could potentially increase the likelihood of challenges to State Water Board actions or hinder its ability to act. Groundwater recharge is important and setting up efficient processes to facilitate groundwater recharge is an critical component of the state achieving groundwater sustainability. Committee staff has provided to the author's staff and sponsors provisions that could use additional clarity, but, given the complexity of the bill, more could exist. The author and sponsors should continue to work with

interested parties to identify areas that could potentially be subject to multiple interpretations.

***Committee amendments will be taken in Senate Environmental Quality***

***Committee.*** Due to time constraints and legislative deadlines, if the committee wishes to amend the bill and the bill is passed out of this committee, the amendments will be taken in the Senate Environmental Quality Committee's hearing on this bill.

***Related legislation***

AB 2060 (Soria, 2024) would have exempt a temporary urgency permit to divert water for underground storage from LSAA requirements if the water diversion commences before January 1, 2029 and the diversion meets certain criteria, as provided. This bill died on the Senate inactive file.

SB 1390 (Caballero, 2024) would have built upon the streamlined permitting for the diversion of certain excess flood flows in SB 122, as specified. This bill failed passage on the Assembly Floor.

SB 122 (Committee on Budget and Fiscal Review, Chapter 51, Statutes of 2023), the Public Resources Trailer Bill, included, among other provisions, streamlined permitting to divert certain excess flood flows, as provided.

AB 830 (Soria, 2023) would have exempted from LSAA's temporary operation of existing infrastructure or temporary pumps to divert flood stage flows, or near-flood stage flows, to groundwater recharge if certain conditions are met. This bill was held on the suspense file in the Senate Appropriations Committee.

## **SUGGESTED AMENDMENTS**

### **AMENDMENT 1**

Amend Water Code Section 1242.1(a)(3) as follows:

(3) As used in this subdivision, "imminent" means a high degree of confidence that flooding and inundation will occur ***within 72 hours*** if flood management actions are not implemented.

### **AMENDMENT 2**

Amend Water Code Section 1242.1(a)(2)(D) as follows:

(D) Flows occurring downstream of a dam that is releasing water for flood control purposes as required by a United States Army Corps of Engineers flood control rule or curve, a court judgement, or other binding rule, if those releases exceed the claims of all known legal users and may be diverted without injury to any lawful user of water , ***are not being released for environmental protection purposes***, and are diverted using existing points of diversion. ***This subparagraph does not apply to flows that do not present an imminent risk of flooding or inundation of land, roads, or structures.***

**AMENDMENT 3**

Amend Water Code Section 1242.1(h) to add:

(h)(2) The person or entity making the diversion shall contact the Department of Fish and Wildlife to determine whether the department has recommendations for appropriate species protection and shall consider implementing those recommendations to the extent possible during the diversion of floodflow. The department's recommendations, if any,, shall be consistent with what is practicable during floodflow conditions.

**AMENDMENT 4**

Add Water Code Section 1242.2 to the bill and amend subdivision (b) as follows:

(b) On an annual basis, until January 1, ~~2029~~, **2034**, the board shall compile ... .

**AMENDMENT 5**

Amend Water Code Section 1347(b)(3)(B) as follows:

(b)(3)(B). The proposed diversion would not unreasonably affect fish, wildlife, or other instream beneficial uses. ***To support the board in making this finding, the applicant shall consult with the Department of Fish and Wildlife.***

**AMENDMENT 6**

Amend Water Code Section 1425(b)(3) as follows:

(b)(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. ***To support the board in making this finding, the applicant shall consult with the Department of Fish and Wildlife.***

**AMENDMENT 7**

Amend Water Code Section 1433.1(b)(3) as follows:

(b)(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses pursuant to this section of Section 1422. ***To support the board in making this finding, the applicant shall consult with the Department of Fish and Wildlife.***

**AMENDMENT 8**

Amend Water Code Sections 1267, 1345, 1347, 1348, 1425, 1431.1, 1433, 1433.1, and 1433.2 and Article 1 (commencing with Section 1420) to sunset the changes that are made by the bill after 10 years.

**AMENDMENT 9**

Amend Water Code Section 1347 to add a new subdivision (c) as follows:

***(c) On or before January 1, 2035, the board shall compile information on the permits issued and diversions conducted pursuant to a permit issued pursuant to subdivision (b) and post the information on its internet website. The board, in compiling this information, may utilize information***

*that it already receives and posts on its internet website. The board may include recommendations to increase the amount of water diverted for recharge while protecting groundwater quality, public safety, and fish and wildlife resources in this report. The board may consult with the Department of Fish and Wildlife in preparing the posted information.*

#### **AMENDMENT 10**

Add Water Code Section 1443 to read as follows:

**1443.** *On or before January 1, 2035, the board shall compile information on the permits issued and diversions conducted pursuant to a permit issued pursuant to this article and post the information on its internet website. The board, in compiling this information, may utilize information that it already receives and posts on its internet website. The board may include recommendations to increase the amount of water diverted for recharge while protecting groundwater quality, public safety, and fish and wildlife resources in this report. The board may consult with the Department of Fish and Wildlife in preparing the posted information.*

#### **AMENDMENT 11**

Add Water Code Section 1443.8 to read as follows:

**1443.8.** *On or before January 1, 2035, the board shall compile information on the permits issued and diversions conducted pursuant to a permit issued pursuant to this article and post the information on its internet website. The board, in compiling this information, may utilize information that it already receives and posts on its internet website. The board may include recommendations to increase the amount of water diverted for recharge while protecting groundwater quality, public safety, and fish and wildlife resources in this report. The board may consult with the Department of Fish and Wildlife in preparing the posted information.*

#### **SUPPORT**

Northern California Water Association (co-sponsor)  
 Regional Water Authority (co-sponsor)  
 Association of California Water Agencies (ACWA)  
 California Water Association  
 County of Yolo  
 Mountain Counties Water Resources Association

#### **OPPOSITION**

California Sportsfishing Protection Alliance  
 Clean Water Action (unless amended)  
 Defenders of Wildlife (unless amended)  
 Environmental Defense Fund (unless amended)  
 Friends of the River  
 Golden State Salmon Association  
 Leadership Counsel for Justice and Accountability (unless amended)  
 Merced County Board of Supervisors (unless amended)

Modesto Irrigation District (unless amended)  
Restore the Delta  
San Francisco Baykeeper  
San Joaquin Tributaries Authority (unless amended)  
Sierra Club California  
Semitropic Water Storage District (unless amended)

**-- END --**