
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Blakespear, Chair

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SUBJECT: Water diversion: groundwater recharge: permit

DIGEST: This bill creates several California Environmental Quality Act (CEQA) exemptions for water diversion projects meeting specified criteria and for related emergency regulations. The bill specifies that projects with these exemptions must notify and consult with California Native American tribes as prescribed in CEQA. This bill also establishes alternative diversion criteria for groundwater recharge.

ANALYSIS:

Existing law:

- 1) Requires under CEQA that a lead agency determines whether a project is exempt from CEQA, or if it must do an initial study to determine if a project will have significant effects on the environment. If a project has no effect on the environment or effects that can be mitigated, the lead agency prepares a negative declaration (ND) or mitigated ND (MND). If the project will have significant impacts, the lead agency prepares an environmental impact report (EIR) to evaluate and propose mitigation measures for any effects on the environment, including impacts or likely impacts to land, air, water, minerals, flora, fauna, ambient noise, and historic or aesthetic significance. (Public Resources Code (PRC) §§21000 et seq.)
- 2) Establishes over 135 statutory CEQA exemptions in the public resources code, water code, government code and other statutes.
 - a) Exempts from CEQA, until January 1, 2028, various water infrastructure projects, including small drinking water wells, that primarily benefit a small disadvantaged community water system or a state small water system by improving the system's water quality, supply, or reliability; encouraging water conservation; or providing safe drinking water. (PRC §21080.47)
 - b) Exempts from CEQA various emergency projects, including specific actions necessary to prevent or mitigate an emergency; emergency repairs to public service facilities to maintain service, and projects to maintain to maintain, repair, restore, demolish, or replace property or facilities

damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor. (PRC §§21080(b)(2), (b)(3), (b)(4))

- 3) Establishes 33 categorical CEQA exemptions in the California Code of Regulations. (CEQA guidelines §15260- 15285). Categorical exemptions generally do not apply if there are significant environmental effects of the project, and specific exclusions include the site being located in a sensitive environment, on a hazardous waste site, having cumulative impacts over time, significantly adversely impacting a historic resource, or if there are other unusual circumstances that would cause a project to have a reasonable possibility for a significant effect on the environment due to unusual circumstances.
- 4) 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)
- 5) Requires, prior to the release of an EIR, MND, or ND for a project, the lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. (PRC §21080.3.1)
- 6) Specifies 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)

- 7) Exempts the temporary diversion of floodflows for groundwater recharge from requirements to obtain a water right if specified conditions are met. (WAT. §1242.1).
- 8) Establishes the State Water Board to administer California's water rights system and 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.*)
- 9) 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 acre feet (AF) per year or an application by a groundwater sustainability agency (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.*)
- 10) 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.*).
- 11) 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.*)
- 12) Requires an application for a permit to appropriate water to set forth sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation. (WAT §1260(k))
- 13) Establishes the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) as the principal law governing water quality regulation in California. (WAT §§13000 *et seq.*)
- 14) Defines "beneficial uses" of the waters of the state that may be protected against quality degradation to include, but not be limited to, domestic, municipal, agricultural, and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. (WAT §13050(f))

- 15) Permits CDFW to 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.
 - a) Under lakebed and stream alteration agreement (LSAA) requirements, requires an entity to notify CDFW before commencing any activity that may substantially alter a streambed. (Fish and Game Code (FGC) §1602).

This bill:

- 1) Creates CEQA exemptions for water diversion projects for flood management and groundwater recharge meeting certain criteria and for permits for temporary and permanent water diversion meeting certain conditions, and for related emergency regulations. Specifically, the bill creates the following CEQA exemptions:
 - a) CEQA exemption for the diversion of floodflow for groundwater recharge commenced before January 1, 2034, and meeting specified criteria depending on location and type of diversion project.
 - b) CEQA exemption for diversion permits, including temporary 180-day and five-year permits as well as permanent ‘minor application’ permits issued by the State Water Resources Control for specified water diversions using existing diversion infrastructure or temporary facilities, among other criteria.
 - c) CEQA exemption for adoption of emergency regulations for temporary urgency permits and for temporary permits for diversion to underground storage.
- 2) For each of these exemptions, requires the lead agency to provide notice to and consult with California Native American tribes in accordance with existing provisions of CEQA, and confirms that a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.
- 3) Expands 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.
Provisions related to these changes are discussed in the Senate Natural Resources and Water Committee’s analysis.

Background

- 1) *EO's and CEQA exemptions for rainy days*. In 2015, then-Governor Brown issued Executive Order B-36-15, which suspended CEQA review for the State Water Resources Control Board's temporary 180-day water rights permits. This was designed to rapidly accelerate the capture of high winter/spring precipitation flows and divert them for groundwater recharge.

In April 2017, then-Governor Brown issued Executive Order B-39-17, which suspended specific CEQA requirements to fast-track emergency water projects for capturing, storing, and recharging high runoff, while maintaining protections for fish and wildlife. The order continued previous suspensions to enhance local groundwater storage efforts.

In 2023, California experienced heavy rains and snowmelt. 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 authorizing water agencies to divert excess floodflows from rivers and streams for the purposes of groundwater recharge without needing to obtain a water right so long as certain criteria were met (N-4-23). The provisions in EO N-4-23 were modified and extended through EO N-7-23, signed May 17, 2023, which extended flood diversion flexibilities implemented for the Tulare Lake Basin to the San Joaquin River Basin as that region faced increased flood risk from Sierra Nevada snowmelt runoff.

Under these 2023 executive orders, these water diversions were not subject CEQA (or Lake and Streambed Alteration Agreement (LSAA)) requirements. Before the EOs, 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, ostensibly stymieing them from capturing rainfall from short-lived rain and snowmelt events.

The Newsom Administration sought to codify the executive orders through budget trailer bill language in 2023. Ultimately, 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.

In January 2025, amid forecasts of a moderate to strong atmospheric river approaching the state, the Governor again revisited permit waivers for floodwater diversion in EO N-16-25. This EO waived the requirement under SB 122 that flood thresholds triggering conditions for diversion be defined in a local plan of flood control or general plan for certain "proclaimed drought" counties.

2) *Types of Groundwater Recharge permits (that would be CEQA exempt in AB 2026).* AB 2026 creates CEQA exemptions for several different types of diversion and groundwater recharge permits. These water permits include:

- *180-day Urgency permits (temporary).* 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 to determine water availability.

- *Five-year permit (temporary)*. AB 658 (Arambula) established a five-year temporary permit for groundwater recharge in 2019. AB 658 was modeled off of Executive Order B-39-17, which directed the State Water Board to prioritize temporary water right permits to accelerate approvals for projects that enhance the ability of a local or state agency to capture high-runoff events for local storage or recharge, consistent with water rights priorities and protections for fish and wildlife, and which created a CEQA exemption for these types of temporary permits, but AB 658 did not include a CEQA exemption for these temporary permits.
 - *Minor application (permanent)*. The State Water Board can issue minor applications permits, which include either:
 - An 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;
 - An application by a GSA for a diversion previously authorized by a 180-day temporary urgency permit.
- 4) *Tribal consultation under CEQA*. AB 52 (Gatto), Chapter 532, Statutes of 2014, established a process for a California Native American tribe to engage in the CEQA review process to avoid significant effects on tribal cultural resources (TCRs). Under CEQA, TCRs are defined as sites, features, places, cultural landscapes, sacred places, or objects with cultural value to a California Native American tribes. Prior to AB 52, impacts of new development and projects on TCRs were not considered under CEQA. AB 52 also enacted mandatory Native American government-to-government tribal consultation processes, including processes for adopting culturally appropriate mitigation measures, with avoidance and preservation in place being the preference, confidentiality standards, and findings required by a lead agency when a CEQA project will cause adverse impacts to TCRs. By requiring consideration of TCRs early in the CEQA process, the legislative intent was to ensure that local and tribal governments, public agencies, and project proponents would have information available early in the project planning process to identify and address potential adverse impacts to TCRs. AB 52 also required a meaningful consideration of Tribal Cultural Values in determination of project impacts and mitigation measures on TCRs.
- 5) *Water quality management in California*. The Porter-Cologne Water Quality Control Act (Porter-Cologne) establishes the responsibilities and authorities of the State Water Board and the nine Regional Water Quality Control Boards. Under this authority, the State Water Board establishes statewide water quality control policy and regulation; coordinates Regional Water Board efforts; and,

reviews Regional Water Board actions for consistency with statewide policy and regulation. Each Regional Water Board is directed to adopt water quality control plans for all areas within their regions. A water quality control plan is statutorily defined as having three components: beneficial uses to be protected; water quality objectives that protect those uses; and a program of implementation needed to achieve the water quality objectives. The objective of water quality control plans is to determine how the quality of surface water and groundwater in the region should be managed to provide the highest water quality reasonably possible.

- 6) *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. 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 simplified method the State Water Board uses to determine whether it is likely 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 year but only up to 20% of the total flow at that time.

This bill codifies the “90/20 method” 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.

- 7) *Sac Valley Recharge Group.* The Sacramento Valley Flood Diversion and Recharge Enhancement Working Group (Sac Valley Recharge Group) originated out of Executive Order N-16-25 and is funded by the Department of Water Resources (DWR). According to 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, despite being stipulated as part of the Group in EO N-16-25. 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.

- 8) *Protecting the Bay-Delta system.* According to the United States Geological Survey, the San Francisco Bay and the Sacramento-San Joaquin Delta, which together are referred to as the “Bay-Delta,” cover more than 1,600 square miles and form the largest estuary on the west coast of the Americas. The estuary is also home to a diverse community of plants and animals and is the hub of California’s freshwater-delivery system to move water from the northern to the southern part of the State. It drains a watershed of more than 75,000 square miles that covers more than 40 percent of California. This system is a source of drinking water for more than 25 million Californians and irrigation for more than 4 million acres of farmland in the Sacramento-San Joaquin (Central) Valley. The health of the Bay-Delta Estuary is important to the natural environment and economy of California.

Historic and current human activities (e.g., water development, land use, wastewater discharges, introduced species, and harvesting), amplified by variations in natural conditions, have degraded the beneficial uses of the Bay-Delta, as evidenced by the declines in populations of many biological resources of the Bay-Delta. DWR also states that the long-term sustainability of the Sacramento-San Joaquin Delta system is threatened by floods, rising sea levels, earthquake damage, aging levees, invasive species, and contaminants. DWR notes that the Delta ecosystem is facing threats that impact native plants, animals, migratory waterfowl, and fish. Iconic Delta smelt, indicators of the estuary’s health, are on state and federal agencies’ threatened and endangered lists. Chinook salmon and other native fish species are also negatively affected by engineered stream flows and disturbances caused by the water pumps in the system.

Comments

- 1) *Purpose of Bill.* 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."

2) *AB 2026, CEQA provisions summary.* AB 2026 codifies CEQA exemptions for groundwater recharge projects, using the CEQA definition of project to mean an action that involves a discretionary decision by a public agency. These CEQA exemptions include:

- Diverting floodflows for groundwater recharge if certain conditions are met (WAT §1242.1)
- State Water Board issuance of 180-day urgency permit. This bill provides 180-day temporary urgency permits with a statutory CEQA 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. This permit is temporary.
- State Water Board issuance of 5-year permit for diversion to storage underground (WAT §1433.1). This exemption 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) This permit is temporary.
- 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. This permit is permanent.
- 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).

- 3) *Stacking CEQA exemptions.* AB 2026 creates CEQA exemptions for three different permits: temporary permits for 180 days, for five years, and permanent permits for ‘minor applications’. It is not uncommon for projects to use temporary permits, and then apply for permanent permits. AB 2026 would explicitly expand the eligibility criteria for a minor application permit to include a project that has already met the criteria for a temporary permit.

Currently, temporary 180 day permits are frequently CEQA exempt, and part of the rationale behind a CEQA exemption for a temporary permit is recognizing that these permits are short and that more complex analysis could be conducted through CEQA before the project became permanent

Temporary permits may be granted CEQA exemptions, with the understanding that there is an expiration date on the CEQA exemptions for temporary permits. Skipping environmental review through CEQA for a permit that is permanent, especially when there have been years of opportunity under the temporary 180 day and 5 year permits, to conduct CEQA, seems to miss the point of the EOs and instead simply deregulate water diversion.

The author and committee may wish to specify that project applicants cannot ‘stack’ CEQA exemptions, meaning that if a project has gotten a CEQA exemption for a temporary 180 day or 5 year permit, they would not be eligible for a CEQA exemption for a permanent “minor alteration” permit. Likewise, a project with a temporary 180 day permit would not be eligible for a CEQA exemption for a 5 year permit.

- 4) *Changing the ground(water) rules.* Beyond the modifications to the CEQA exemptions described above, AB 2026 changes the conditions that would trigger and the criteria that would apply to these actions. This includes expanding the definition of “floodflow”, modifying the definition of “imminent” in the context of flooding, and making other changes that in summary expands the application of temporary diversion of floodflows for groundwater recharge without an appropriative water right, expand permanent minor applications to include prior diversions pursuant to a 180-day urgency permit, and expand the application for minor applications, 180-day urgency permits, and 5-year permit for underground storage.

While the specifics and policy implications of these changes are addressed more thoroughly in the Senate Natural Resources and Water Committee, it is safe to say that exempting these actions from CEQA while simultaneously expanding their environmental impact will make it more difficult for the state to assess their impacts.

- 5) *Tribal consultation, CEQA exemptions, and emergencies.* AB 2026 creates several new CEQA exemptions, but it also requires that these projects follow CEQA's process for notification and consultation with tribes to protect TCRs. Paradoxically, because CEQA is the home of tribal consultation and mitigation for impacts to TCR's, projects that are CEQA-exempt do not have requirements (unless specifically added) to notify or consult with tribes or to mitigate impacts to TCRs.

Adding the CEQA requirements for tribal consultation to CEQA-exempt projects is thus essential to protecting TCRs. However, the process of tribal consultation is appropriately iterative and can be time consuming; it is worth considering how such consultation could impact expediency of groundwater recharge projects in scenarios of imminent flooding or other emergencies.

Going forward, the author and committee may wish to consider how the timelines for tribal consultation affect diversion of water in imminent flooding scenarios or even the timelines for temporary, 180 day permits.

- 6) *Potential impacts on water quality.* The dynamics of water-quality variability are complex in the Delta because it is a mixing zone of water from the Sacramento and San Joaquin Rivers, agricultural return water, and the San Francisco Estuary.¹ Water quality in the Delta has an unusually large spatial heterogeneity because these sources and have distinct properties. Particularly in the Delta, localized diversions can have regional-scale consequences, some unintended and potentially conflicting with other management objectives that manipulate the flow, such as facilitating the migration of fish, flushing to maintain oxygen levels, and preserving the quality of drinking water.¹

Water diversions and associated manipulations of river flow can alter the flow dynamics and downstream transport of fluid, heat, salt, oxygen, nutrients, contaminants, sediments, and organic and inorganic particles.² The alteration of these properties have implications for habitat and water quality in the watershed. There have been measurable changes in species composition, distribution, abundance, and health of fish and invertebrates in marine coastal waters that are directly or indirectly attributed to reduced or modified freshwater inflow from diversions.³ Fish spawning behavior and success is influenced by the quality and quantity of freshwater inflow, generally around

¹ Monsen, N.E., et. al. (2007). Effects of Flow Diversions on Water and Habitat Quality: Examples from California's Highly Manipulated Sacramento-San Joaquin Delta.

² Schoellhamer, D. H., et. al. (2016). Recent Advances in Understanding Flow Dynamics and Transport of Water-Quality Constituents in the Sacramento-San Joaquin River Delta.

³ Drinkwater, K. (1994). Effects of river regulation and diversion on marine fish and invertebrates.

times near peak run-off, which are the times targeted for the proposed diversions in this bill.^{3,4,5}

Additionally, pollution problems can develop or worsen with the reduction of river flow. Waters downstream would experience less dilution and weaker mean river currents can lead to longer residence times of contaminants.³ Reduced freshwater flow into the San Francisco Bay can inhibit its ability to flush the waters of industrial contaminants and raise its salt content, which has implications for the intrusion of salt upstream and general circulation patterns.³ Processes that may increase the concentration of pollutants can have both ecological and drinking water quality implications, increasing the toxicity of the water and bioaccumulating in various species.

Taking into account the heterogeneity of water properties and characteristics across the Delta, current manipulations, and the sensitivities related to water quality, any new form of manipulation, including the diversion methods proposed by this bill, warrants a closer look on the potential water quality ramifications.

- 7) *Introducing the 80/50/20 method.* This bill introduces an alternative diversion method, defined in the bill as the “flood/recharge diversion criteria,” and more commonly referred to as the 80/50/20 method. The aim of the 80/50/20 method is to capture and divert water during high flow seasons and during wet years, as opposed to the currently used “90/20 method” which only looks at daily flows and is intended to be a protective approach. Under AB 2026, this new method would apply to minor applications, 180-day urgency permits, and 5-year permits. This newly proposed diversion method authorizes diversion from December 1 to March 31 every year and triggers the diversion when the cumulative runoff (on the date of measurement and at the point of diversion) exceeds the 80th percentile of the historical cumulative water year runoff. The diversion must cease when the cumulative water year runoff is lower than the 50th percentile of the historical cumulative runoff. Further, the amount of water diverted must be no more than 20% of the daily flow and after certain conditions are met.

This method differs significantly from the only current method used to divert water for groundwater recharge. The “90/20 method,” which is considered to be protective, authorizes diversion when the instream flow exceeds the 90th percentile of historic daily flow between December 1 and March 31 every year.

⁴ Meng, L. and Matern, S. A. (2001). Native and Introduced Larval Fishes of Suisun Marsh, California: The Effects of Freshwater Flow.

⁵ Feyrer, F., et. al. (2004). Early Life History of Fishes in the San Francisco Estuary and Watershed.

This diversion is capped at 20% of the daily flow after certain conditions are satisfied.

The two methods are distinct in that one is triggered by daily conditions while the other is triggered by yearly conditions. The 90/20 method requires a daily evaluation of the conditions, whereas the 80/50/20 method is agnostic to daily conditions and diversions could occur for longer periods of time and regardless of daily or weekly fluctuations. This could be problematic as the flow conditions of rivers and tributaries may vary significantly.

Questions have been raised about the functionality of the 80/50/20 method and its potential consequences. Diversion is triggered within a limited time span and based on the cumulative flow within the water year (October 1 to September 30). If diversion is triggered, then it could be authorized for weeks or months, regardless if the conditions were to become drier or the flow highly fluctuates. Diversion would have to cease once 20% of the daily flow is captured, however, diversion could be retriggered the next day. Authorized diversion during a prolonged period with normal or relatively lower flow conditions could lead to a notable reduction in river run-off and unintended impacts on water quality.

The sponsors argue that other guardrails would be in place to ensure that these diversions would not negatively impact public trust resources, but it is unclear how protective these guardrails may be. For example, one of the guardrails is that the Delta must be in excess water conditions. But excess water conditions are simply based off the total input and outputs of the Delta, and do not reflect the intricate flow variability within the entire water system and localized weather impacts, thus some parts of the Delta may not exhibit characteristics of “excess,” yet diversions may still occur.

Conversely, with drier conditions, the trigger for diversion may not occur within the authorized timeframe as the 80th percentile of historical cumulative water year runoff would not have been reached, missing the opportunity to recharge groundwater if heavy rain events occur. Unintended consequences aside, it is unclear how effective this approach may be in achieving the goals of the author and sponsors. The likelihood of success of this method is highly dependent on the interannual flows within the Delta, which may vary throughout the years.

Further, there are concerns about the design of this approach, particularly, the 50th percentile cut-off guardrail. Diversions can begin once the cumulative runoff (or total amount of water in runoff since October 1) reaches the 80th

percentile of historical cumulative runoff, but are cut off once the cumulative runoff is lower than the 50th percentile. Mathematically, this is almost impossible, and diversions may rarely be cut off by the 50th percentile guardrail. For this 50th percentile cut-off to become likely, the amount of runoff would have to decrease drastically. Historical data has shown that even with a drastic decrease in runoff, the 50th percentile cut-off may not be reached for weeks. This would mean that diversions could occur during very dry conditions for days or weeks on end, given no other guardrail is activated. It is unclear if the design of this method is intended or what the language print intends to achieve.

Codifying this approach could be a gamble, and the question before the committee is whether a 7-year trial of this method is worth the risk in seizing an uncertain opportunity for additional groundwater recharge, but potentially at the unknown expense of water quality and other public trust resources.

- 8) *Creating a safety net.* The 80/50/20 method was developed by the Sacramento Valley Flood Diversion and Recharge Enhancement Working Group (Sac Valley Recharge Group) in collaboration with MBK Engineers. The efforts of the Sac Valley Recharge Group were funded by the Department of Water Resources (DWR), but it is unclear the extent DWR was involved in the development of this method. A finding of the working group was that the existing 90/20 method presents infrequent and fleeting opportunities for diversions and results in little to no diversions, even when flows are high. As a recommendation, the Sac Valley Recharge Group proposed that “DWR should provide technical assistance to local agencies and districts to develop a temporary water rights permit using an alternative diversion criteria...” and that it would “include coordination with the State Water Board and [other] groups that might object to the [permit].”

It is the understanding of staff that DWR and the State Water Board were not in coordination with the working group when the alternative 80/50/20 method was developed and that the method is still undergoing refinement.

Nevertheless, this bill proposes to codify this technically complicated method and attach it to three different types of permits (that will ultimately be approved, as described in *comment 9*), without state agency review or stakeholder engagement and against the recommendation set forth by the working group. This is notable as various stakeholders have expressed concerns over the development and use of the proposed method.

The sponsors have expressed a dire need and sense of urgency to recharge groundwater, leading to the approach taken with this bill. If the state agencies

were to develop regulations establishing alternative diversion criteria alone, the sponsors argue that it could lead to further delays and missed opportunities to recharge groundwater. However, it is of monumental importance that the employment of any new method for diversion is done well and with the needs of all impacted parties considered. To strike a balance between the urgency indicated by the author and sponsors and mitigation of potential harm, the newly proposed method could be piloted while regulations are developed.

The pilot could include the proposed and additional guardrails, including limiting diversions to certain locations to mitigate unintended impacts on the environment. Serving as a safety net, the regulations could be guided legislatively to focus on innovatively optimizing groundwater recharge while ensuring protection for the environment and beneficial uses. The author and sponsors could continue to engage with the committees to develop those guidelines. Without such a safety net, the Delta could be subjected to a 7-year trial period with the proposed methods if this bill should be enacted. *Going forward, the author may wish to consider requiring the State Water Board, in coordination with DWR, to adopt regulations establishing alternative diversion criteria that aim to optimize groundwater recharge while protecting public health and the environment. With the adoption of such regulations, the proposed provisions regarding the “flood/recharge diversion criteria” and “location-specific diversion criteria” would become inoperative.*

- 9) *Tied hands.* This bill requires the State Water Board to approve a minor application if the State Water Board determines that a preponderance of evidence shows that the diversion would not injure any legal user of water, including through significant changes in water quality, and unreasonably affect fish, wildlife, or other instream beneficial uses. If the State Water Board does not find sufficient evidence, indicating that there may be injury to legal users of water or impacts to aquatic life, they are required to approve it anyways based on terms that the State Water Board would develop to satisfy those conditions, only to the “maximum extent possible.”

This implies that the State Water Board could come up with conditions for a permit to lessen the impact on legal users of water, wildlife, or beneficial uses, but would not be able to deny a permit. Permits would be issued even if the impacts were unavoidable and the State Water Board would have otherwise denied the permit. It should also be noted that these permits would be required to be issued while employing the newly proposed 80/50/20 method, which may come with unknown consequences.

Current law does require that the State Water Board approve conditional temporary change orders that authorize diversion if a preponderance of evidence demonstrates that the two conditions described above are met (WAT §1443.1). However, the State Water Board is not prohibited from denying these change orders if they do not find sufficient evidence. These change orders also apply to diversions that are already permitted but urgently need to be altered. A similar authority exists for petitions for temporary change of water rights (WAT §1728), but the State Water Board has the authority to deny these petitions.

The proposed provisions that prevent the State Water Board from denying permits for minor applications are unprecedented. Effectively mitigating the impacts of the diversion on legal users of water, wildlife, and other beneficial uses through permit terms and conditions is not always guaranteed and the State Water Board would be cornered into mitigating potentially unreasonable impacts when a permit denial would have been more appropriate.

To ensure that minor applications are conducted in the most protective manner, the author and committee may wish to consider aligning the proposed permitting authority of the State Water Board for minor applications with that of temporary change orders.

- 10) *Senate Natural Resources and Water Committee Amendments.* Due to timing constraints, committee amendments accepted in the Senate Committee on Natural Resources and Water on June 23, 2026, will be amended into the bill as part of actions taken in this committee. Committee amendments, among other provisions, impose additional guardrails, increase protections for wildlife, and increase oversight of diversion activity through field investigations, recordkeeping, and reporting requirements.
- 11) *Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comments 3, 5, & 9 above.*

DOUBLE REFERRAL:

This measure was heard in Senate Committee on Natural Resources and Water on June 23, 2026, and passed out of committee with a vote of 5-0.

Related/Prior Legislation

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.

SOURCE: Regional Water Authority
Northern California Water Association

SUPPORT:

California Water Association
Mountain Counties Water Resources Association
Northern California Water Association
Regional Water Authority

OPPOSITION:

California Sportsfishing Protection Alliance
Friends of the River
Golden State Salmon Association (UNREG)
Merced Irrigation Urban Groundwater Sustainability Agency
Restore the Delta
San Francisco Baykeeper
Sierra Club California
Audubon California
California Trout
Clean Water Action California
Defenders of Wildlife
Environmental Defense Fund
Leadership Counsel for Justice & Accountability
San Joaquin Tributaries Authority (SJTA)
Semitropic Water Storage District
Sustainable Conservation
Trout Unlimited
Tulare Irrigation District (UNREG)

-- END --