
SENATE COMMITTEE ON APPROPRIATIONS

Senator Sabrina Cervantes, Chair
2025 - 2026 Regular Session

AB 2026 (Aguiar-Curry) - Water diversion: groundwater recharge: permit

Version: July 2, 2026

Urgency: No

Hearing Date: August 3, 2026

Policy Vote: N.R. & W. 5 - 0, E.Q. 5 - 0

Mandate: No

Consultant: Ashley Ames

Bill Summary: This bill would create several California Environmental Quality Act (CEQA) exemptions for water diversion projects meeting specified criteria and for related emergency regulations, would require notice to and consultation with California Native American tribes for projects using those exemptions, and would establish alternative diversion criteria for groundwater recharge.

Fiscal Impact:

- The State Water Board estimates ongoing costs of at least \$5 million annually (Water Rights Fund, General Fund) due to increased floodflow diversions and the need to overhaul the State Water Board's temporary and standard water right permitting programs as well as one-time costs of at least \$1 million (General Fund) to prepare CEQA documents for regulatory updates for permits.
- The California Department of Fish and Wildlife (CDFW) estimates ongoing costs of about \$1.4 million in fiscal years 2027-28 and 2028-29 and \$1.3 million annually thereafter (General Fund) to review of permit applications; perform iterative consultation with the applicant and agency staff; conduct site inspections when appropriate; analyze proposed flow criteria, diversion infrastructure, and system-specific operations with respect to current hydrology, operations, and ecosystem conditions; carry out CESA consultation and permitting associated with temporary permits to recharge groundwater; coordinate with various subject matter experts; develop mitigation measures to protect fish and wildlife resources during permitted diversion operations; provide streamlined consultation for diversions of floodflows; develop recommendations for species protection related to diversions of floodflows; draft correspondence to the applicant (e.g., consultation letter); compile data on diversions under flood condition and track permit issuance and permit renewal timelines; and perform consultation with agency staff to provide protective flow considerations and share tracked data during reporting activities.

Background:

Executive orders and CEQA exemptions. Governor Brown's Executive Order B-36-15 (2015) suspended CEQA review for the State Water Board's temporary 180-day water rights permits to speed capture of high winter and spring flows for groundwater recharge, and B-39-17 (April 2017) suspended specified CEQA requirements to fast-track emergency projects capturing, storing, and recharging high runoff while maintaining fish and wildlife protections. During the wet year of 2023, Governor Newsom issued EO N-4-23 allowing water agencies to divert excess floodflows for recharge without a water right if certain criteria were met, and EO N-7-23 (May 17, 2023) extended those Tulare Lake Basin flexibilities to the San Joaquin River Basin as

snowmelt raised flood risk. Diversions under the 2023 orders were exempt from both CEQA and Lake and Streambed Alteration Agreement (LSAA) requirements; absent the orders, a diverter would have had to seek a new water right permit or change an existing one, which effectively prevented capture of short-lived rain and snowmelt events.

The administration sought to codify the orders through 2023 budget trailer bill language, and provisions authorizing unpermitted floodflow diversion for recharge under specified conditions were enacted in SB 122 (Committee on Budget and Fiscal Review, Chapter 51, Statutes of 2023). SB 122 departed from the executive orders by requiring a local or regional agency to rely on a local plan of flood control or a county general plan considering flood risk, and by applying CEQA and LSAA requirements. It also barred application of diverted water to certain lands, such as those where manure had been applied within the previous 45 days, and required diversions to use existing diversion infrastructure or temporary pumps and existing recharge locations, add no new permanent infrastructure or construction, and employ protective screens on temporary pumps where water is drawn directly from a river or stream — screens of rigid, perforated, woven, or slotted material that pass water while excluding fish, set parallel to the flow and adjacent to the water's edge. In January 2025, ahead of a forecast atmospheric river, EO N-16-25 waived SB 122's requirement that flood thresholds triggering diversion be defined in a local flood control plan or general plan for certain proclaimed drought counties.

Permits the bill would exempt. Because permanent water rights take a long time to obtain, many recharge projects have used 180-day temporary urgency permits. The Water Board has received 55 such applications since 2015 and approved 46, many exempted from CEQA under drought executive orders and using the 90/20 method for water availability. The bill would broaden eligibility for these permits by treating a groundwater sustainability agency, local agency, or private entity operating under agreement with a GSA as having an urgent need where it seeks to augment a basin's recharge, and would exempt issuance from CEQA where diversions occur through existing infrastructure or temporary facilities that require no construction and carry screened intakes.

AB 658 (Arambula, 2019) created a five-year temporary permit for diversion to underground storage, modeled on B-39-17 — which had directed the Water Board to prioritize temporary permits accelerating capture of high-runoff events consistent with water rights priorities and fish and wildlife protections, and had exempted them from CEQA — but AB 658 itself included no CEQA exemption. The bill would add one, though not where the same project previously held a 180-day permit that did not undergo environmental review.

Tribal consultation. AB 52 (Gatto, Chapter 532, Statutes of 2014) created a process for California Native American tribes to participate in CEQA review to avoid significant effects on tribal cultural resources — sites, features, places, cultural landscapes, sacred places, or objects of cultural value to a tribe — which were not considered under CEQA before its enactment. AB 52 established mandatory government-to-government consultation, processes for culturally appropriate mitigation with a preference for avoidance and preservation in place, confidentiality standards, and required lead

agency findings where a project would adversely affect tribal cultural resources, with the intent that impacts be identified early in project planning.

Water quality management. The Porter-Cologne Water Quality Control Act establishes the authorities of the State Water Board and the nine Regional Water Quality Control Boards. The State Water Board sets statewide water quality policy and regulation, coordinates regional board efforts, and reviews regional actions for consistency. Each regional board adopts water quality control plans containing three statutory components — beneficial uses to be protected, water quality objectives protecting those uses, and a program of implementation — with the aim of managing surface water and groundwater quality to the highest level reasonably possible.

Water availability analysis. Every water right application requires an analysis of whether water is actually available to divert, a step that is time-consuming and often costs more than \$50,000. For temporary recharge permits the Board allows an expedited alternative, the 90/20 method, under which water is available on a given day if instream flow exceeds the flow typically occurring 90% of the year, and then only up to 20% of total flow at that time. The bill would codify the 90/20 method and add two criteria — flood/recharge diversion and location-specific diversion criteria — intended as expedited pathways for completing the analysis.

Sac Valley Recharge Group. The Sacramento Valley Flood Diversion and Recharge Enhancement Working Group grew out of EO N-16-25 and is funded by DWR; sponsors describe participants including conservation groups, engineers, landowners, water rights holders, and government employees. The order directed DWR, the State Water Board, the Natural Resources Agency, and CalEPA to identify obstacles hindering efforts to maximize diversions to storage of excess flows from anticipated winter storms, remove or minimize them where possible, and promptly report additional statutory or regulatory barriers warranting suspension. The bill incorporates some of the group's recommendations, but it does not appear the State Water Board participated despite being named in the order — and it is unknown whether the Board, which would play a significant role in implementation, took part in developing the recommendations into this proposal.

Protecting the Bay-Delta. Per the U.S. Geological Survey, the San Francisco Bay and Sacramento-San Joaquin Delta together cover more than 1,600 square miles and form the largest estuary on the west coast of the Americas, hosting diverse plant and animal communities and serving as the hub of the state's freshwater delivery system. The Bay-Delta drains a watershed exceeding 75,000 square miles across more than 40 percent of California, supplying drinking water to over 25 million residents and irrigation to more than 4 million acres of Central Valley farmland. Human activities — water development, land use, wastewater discharges, introduced species, and harvesting — amplified by natural variation have degraded its beneficial uses, reflected in declining populations of many biological resources. DWR identifies floods, rising sea levels, earthquake damage, aging levees, invasive species, and contaminants as long-term threats, notes impacts on native plants, animals, migratory waterfowl, and fish, and points to Delta smelt, listed as threatened or endangered by state and federal agencies, as an indicator of estuary health, with Chinook salmon and other native fish also harmed by engineered flows and pumping disturbance.

Proposed Law: This bill would:

1. Create CEQA exemptions for water diversion for flood management and groundwater recharge and for related emergency regulations, specifically:
 - a. An exemption for the diversion of floodflows for groundwater recharge without an appropriative water right, for diversions commenced before January 1, 2034, meeting specified conditions as to flood notice, floodflow definition, Delta conditions, application sites, use of existing infrastructure or temporary pumps with protective screens, and reporting.
 - b. An exemption for the State Water Resources Control Board's issuance of minor application permits, 180-day temporary urgency permits, and five-year temporary permits for diversion to underground storage, where diversions occur through existing diversion infrastructure or temporary facilities that require no construction and, if diverting directly from a river or stream, have protective screens.
 - c. An exemption for the adoption of emergency regulations under the new diversion criteria article.
2. Condition those permit exemptions on prior environmental review, providing that the minor application exemption would not apply if the project did not undergo CEQA review, and that the five-year permit exemption would not apply where the same project was subject to a 180-day permit that did not undergo CEQA review.
3. Require, for each exemption, the lead agency to provide notice to and consult with California Native American tribes in accordance with specified CEQA provisions before approving or carrying out the action, and confirm that a decisionmaking authority may impose conditions of approval to avoid or mitigate potential impacts to tribal cultural resources.
4. Establish a new article governing water availability for temporary urgency permits and temporary permits for diversion to underground storage, defining and applying:
 - a. Flood/recharge diversion criteria for the Sacramento River and its tributaries upstream of the Delta, except reaches upstream of a major rim dam.
 - b. Location-specific diversion criteria elsewhere in the state to the maximum extent possible.
 - c. The 90/20 method where location-specific criteria are not possible, to be detailed by emergency regulation.
5. Expand the definition of a minor application to include diversions previously authorized by a five-year temporary permit and diversions previously authorized by a temporary permit for underground storage, and expand eligibility for 180-day urgency permits to include groundwater sustainability agencies, local agencies, and private entities operating under agreement with a groundwater sustainability agency seeking to augment basin recharge.

6. Establish expedited processing for these minor applications, including public notice within 30 days, a 45-day comment period, a decision within 180 days of the comment deadline, reconsideration concluding within 90 days, and fees set at a level to encourage applications.
7. Require the State Water Board to post reports and compile and post information on permits issued and diversions conducted, annually through January 1, 2034 for floodflow diversions and by January 1, 2035 for each permit category, with authority to include recommendations to increase recharge while protecting groundwater quality, public safety, and fish and wildlife resources.
8. Sunset these provisions on January 1, 2037, and limit the new diversion criteria article and delayed-initiation temporary permits to applications submitted before that date.

Related 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.

Staff Comments:

State Water Board costs. According to the State Water Board, its workload would include developing and implementing new programs and increased tribal consultations when applicable. The changes related to the diversion of imminent flood flows would necessitate increased staffing for monitoring and enforcement. Some of the ongoing staffing costs would be supported by the Water Rights Fund and would necessitate an increase in water right fees to generate the needed level of support. It is unlikely that application fees would generate the needed staffing resource support, and as a result, fee increases would need to be passed to other fee payers. At least \$1.25 million annually, related to floodflow diversions, would be attributable to the General Fund. Due to ambiguity in the bill and unknown increases in diversions, the State Water Board anticipates the potential for unknown additional costs for tribal consultations.

CDFW Lake and Streambed Alteration Program costs. CDFW notes that it is difficult to estimate the exact fiscal impact on the Lake and Streambed Alteration Program should this bill pass. While this bill would exempt certain diversions from the Fish and Game Code section 1602 requirements that are currently subject to the Lake and Streambed Alteration notification process, it would still require the department to consult with entities and develop individualized fish and wildlife resource protections for exempt projects while simultaneously restricting the department's ability to collect fees to pay for staff time and expertise through the notification process. The Lake and Streambed Alteration notification fee is determined by the type of project and project complexity. Because the department assesses each project individually on a case-by-case basis, it cannot provide a specific monetary figure. Project notification fees can range from several hundred dollars to several thousand dollars depending on the complexity and cost of the project. This bill would be effective statewide and has the potential to result in a loss of tens of thousands of dollars annually.

Budget context. The 2026-27 budget does not anticipate this workload. The Water Board received twelve augmentations in the Budget Act of 2026, none for the Division of Water Rights; the items address drinking water, water quality permitting and enforcement, water recycling, and facilities. The Legislature did preserve 29 vacant positions and \$5.7 million in special funds at the Water Board, and 60.1 positions at CDFW, by rejecting the Governor's vacancy eliminations — though whether that authority sits in the relevant divisions and funds is a separate question.

A new deck chair arrangement. An exemption from CEQA does not eliminate the costs associated with environmental review. An exemption changes where or on whom a cost may be borne, or in some cases could change it into a different kind of cost altogether. That said, some kind of cost still tends to emerge.

Under ordinary practice, the project applicant pays for environmental review — consultants to prepare the studies, technical analyses, and often the lead agency's staff time as well. AB 2026 would make this explicit by requiring an application to show either that the applicant completed the required review or that the project is exempt. Where an exemption applied, that expense would go away. So would the delay. For groundwater recharge, the time savings may matter more than money.

State agencies could also realize cost savings, since they are generally the lead agencies for these projects, and otherwise would be responsible for reviewing documents, preparing findings, and responding to comments. However, these savings would be partial. Even with an exemption, staff still have to determine whether an exemption applies, and this bill would preserve tribal consultation under existing CEQA law whether or not a project is exempt. Consultation is among the more staff-intensive parts of the process, and the Water Board identifies it as a source of unknown additional cost given uncertainty about how many diversions would occur.

The larger shift would run in the other direction. When environmental review is skipped, the environmental protections that would have emerged as project-specific mitigation measures have to come from somewhere else — under this bill, from conditions written directly into statute, such as screened intakes, use of existing infrastructure, no permanent construction, restrictions on where diverted water may be applied, and limits tied to Delta conditions. Those conditions only work if someone monitors and enforces them. That is why the Water Board attributes at least \$1.25 million annually in General Fund costs to floodflow diversions, and CDFW also cites significant costs. Analytical work at the front end would become compliance work at the back end, and it would be borne by the state rather than the applicant.

This shift could be worthwhile given the time-sensitive nature of these groundwater recharge projects, which is something that merits the committee's consideration.

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