

Date of Hearing: March 25, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 639 (Soria) – As Introduced February 13, 2025

SUBJECT: Dams: exceptions

SUMMARY: Provides that a “weir,” as defined, that has at least three feet of freeboard is not subject to regulation or oversight by the Division of Safety of Dams (DSOD) within the Department of Water Resources (DWR). Specifically, **this bill:**

- 1) Provides that any barrier that does not impound water above the top a levee where maximum storage has a minimum of three feet of freeboard and is a weir with either mechanically or manually removable flashboards or gates shall not be considered a dam.
- 2) Defines “weir” as an agricultural water delivery structure with removable barriers that serves to regulate the flow of water in a stream and that functions as part of a federal flood control system.
- 3) Makes technical and clarifying changes.

EXISTING LAW:

- 1) Subjects all dams and reservoirs to regulation and oversight by DSOD within DWR (Water Code § 6075).
- 2) Defines “dam” as any artificial barrier, together with additional appurtenant structures (including training walls, spillways, outlets, tunnels, channels, pipelines, or dikes) that may impound or divert water and is either (a) 25 feet or greater in height from the natural stream bed to the top of the barrier/maximum storage elevation, or (b) impounds a capacity of 50 acre-feet of water or more (Water Code § 6002).
- 3) Excludes any barrier not in excess of six feet or a barrier with a storage capacity of 15 acre-feet or less, regardless of height, from the definition of dam (Water Code § 6003).
- 4) Excludes certain structures from the definition of “dam,” including an obstruction in a canal as a barrier across a stream channel, watercourse, or natural drainage area from consideration as a dam if the structure is no greater than 15 feet in height (Water Code § 6004).
- 5) Excludes dams owned and operated by the federal government from regulation and oversight by DSOD (Water Code § 6009).
- 6) Requires DSOD to inspect dams, reservoirs, and appurtenant structures to verify their safety in accordance with a prescribed schedule depending on the hazard classification, as determined by DSOD, of the facility (Water Code § 6102.5).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** According to the author, “Water impounding and delivery systems called ‘weirs’ do not typically cross the entirety of rivers or streams, do not impound water above the river levees and are only operated during low-flow periods to pool water for delivery to adjacent farms and ranches. Any spill would be contained entirely within a streambed leading [DWR] to rate them as very low hazard. Despite this rating, [DSOD] includes weirs in their maintenance and inspection schedule and imposes fees of \$56,000 on all water impounding structures despite not posing an equivalent safety risk as a dam. This has significantly increased the cost to operate and maintain these weirs with no practical increase in safety for California’s residents. [This bill] specifies that these impounding facilities do not count as dams under [DWR’s] inspection program in a very narrow exemption to ensure affordable water deliveries while maintaining California’s high safety standards for dams.”

- 2) **Background.** Since 1929, the State of California has regulated and supervised dams to prevent failure, safeguard life, and protect property. Any structures that meet the definition of “dam” (see #2 under Existing Law, above) are considered “jurisdictional dams” and are subject to regulation and oversight by DSOD within DWR. There are more than 1,200 jurisdictional dams in California. DSOD ensures dam safety by:
 - Reviewing and approving dam enlargements, repairs, alterations, and removals to ensure that the dam appurtenant structures are designed to meet minimum requirements;
 - Performing independent analyses to understand dam and appurtenant structures performance. These analyses can include structural, hydrologic, hydraulic, and geotechnical evaluations;
 - Overseeing construction to ensure work is being done in accordance with the approved plans and specifications;
 - Inspecting each dam on an annual basis to ensure it is safe, performing as intended, and is not developing issues. Roughly one-third of these inspections include in-depth instrumentation reviews of the dam surveillance network data; and
 - Periodically reviewing the stability of dams and their major appurtenances in light of improved design approaches and requirements, as well as new findings regarding earthquake hazards and hydrologic estimates in California.

Certain types of structures (e.g., those that are smaller and impound water principally for agricultural purposes) are exempt from oversight by DSOD.

Federal flood control system. This bill applies to “weirs” that are part of the federal flood control system. The federal flood control system consists of structures constructed by the U.S. Army Corps of Engineers for local flood protection that are operated and maintained by local agencies post-construction. Such facilities must meet federal standards and are subject to federal flood control regulations.

Freeboard. In an open channel, freeboard is the distance measured from the maximum water level to the uppermost watertight portion of a surrounding channel. One might think of

“freeboard” as a safety buffer that helps prevent water overtopping a channel by compensating for factors that can contribute to water levels higher than anticipated, such as waves, surges, or splashes.

- 3) **Arguments in support.** The Kings River Conservation District (KRCD) is the sponsor of this bill and argues that there is “no threat to the public health and safety or property that warrants continued DSOD oversight and inspections” of weirs. KRCD notes that “weirs are operated by the placement of wooden or other mechanical flashboards during those periods when it is vital to pool water for delivery for irrigation purposes on nearby agricultural lands,” but that these boards are removed during extraordinary weather events so that there is no risk of the barrier failing. Finally, KRCD points out that “in over one hundred years of operation we are unaware of any structural or operational failure that would have resulted in impacts to adjacent property.”
- 4) **Policy consideration.** It is unclear how many dams would be excluded from DSOD oversight by this bill; the goal of the sponsor and author is to exempt certain structures on the Kings River from oversight, but this bill will apply statewide if it is enacted. The Committee may wish to request that the author and sponsor to determine how many jurisdictional dams will be affected by this bill should it advance.
- 5) **Technical amendment.** The Committee may wish to propose the following technical amendments (*in bold italics*) to improve clarity:

6003. (a) Any barrier that is or will be not in excess of six feet in height, regardless of storage capacity, or that has or will have a storage capacity not in excess of 15 acre-feet, regardless of height, shall not be considered a dam.

(b) Any barrier that does not impound water above the top of a levee where maximum storage behind the barrier has a minimum of three feet of freeboard on the levee and is a weir ~~with either mechanically or manually removable flashboards or gates~~ shall not be considered a dam.

(c) For purposes of this section, a “weir” is defined as an agricultural water delivery structure with ~~removable barriers~~ ***either mechanically or manually removable flashboards or gates*** that serves to regulate the flow of water in a stream and that functions as part of a federal flood control system as defined by Part 208 (commencing with Section 208.10) of Chapter II of Title 33 of the Code of Federal Regulations.

- 6) **Related legislation.** SB 122 (Committee on Budget and Fiscal Review), Chapter 51, Statutes of 2023, is the public resources trailer bill for the 2023-24 fiscal year. Among other provisions, SB 122 increases the application fee for the enlargement, repair, alteration or removal of an existing dam or reservoir and authorizes DWR to adopt regulations to adjust the application filing fees to ensure the fees cover DWR’s reasonable costs in processing applications.

AB 1164 (Flora), Chapter 943, Statutes of 2022, exempts “regulating basins,” as defined, from regulation and oversight by DSOD.

AB 727 (Flora) of 2019 would have exempted structures that are 20 feet or less in height, owned or operated by a public agency, and used principally for impounding water for

agricultural use from regulation and oversight by DSOD. AB 727 was held in the Senate Natural Resources and Water Committee.

AB 1270 (Gallagher), Chapter 3, Statutes of 2018, repealed previous provisions of law related to dam safety and inspection, and instead, among other things, added specific requirements for DSOD to inspect dams, reservoirs, and appurtenant structures on an annual and bi-annual schedule based on hazard classification.

REGISTERED SUPPORT / OPPOSITION:**Support**

Kings River Conservation District (sponsor)
Association of California Water Agencies
California Association of Winegrape Growers
California Farm Bureau
Kings River Water Association
Tulare Lake Basin Water Storage District
Valley Ag Water Coalition
Western Growers Association

Opposition

None on file

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