

Date of Hearing: April 8, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 717 (Aguiar-Curry) – As Amended March 10, 2025

**SUBJECT:** Water rights: appropriation: small restoration use

**SUMMARY:** Creates a fourth water right registration, “small restoration use,” that allows the use or diversion to storage of no more than 20 acre-feet of water annually, subject to specified requirements. Specifically, **this bill**:

- 1) Creates an additional water right registration, “small restoration use,” that can be issued by the State Water Resources Control Board (State Water Board).
- 2) Defines “small restoration use” as any of the following uses of water in connection with a habitat project:
  - a) For fish and wildlife preservation and enhancement not to exceed instream or direct diversion of 42,000 gallons per day and no more than 20 acre-feet (AF) annually;
  - b) For fish and wildlife preservation and enhancement not to exceed diversion to storage of 20 AF annually, including impoundment for incidental fire protection, irrigation, recreational, or fish and wildlife purposes; and
  - c) For diversion to storage of 20 AF annually, including impoundment for incidental fire protection, irrigation, recreational purposes, or fish and wildlife purposes when the use meets all of the following:
    - i) The water is diverted during times when the State Water Board determines that flows exceed what is reasonably necessary for prior rights and instream beneficial uses;
    - ii) The right to divert and use water is provided in exchange for a binding commitment, approved by the State Water Board and made a condition of the registration, to reduce other diversions during times of deficient streamflow; and
    - iii) The State Water Board has determined that the environmental benefit of the reduced diversion exceeds any adverse impact of the diversion to storage.
- 3) Provides that a “binding commitment” to reduce other diversions [referenced above in (2)(c)(ii)] may be accomplished an instream flow dedication pursuant to Water Code § 1707, a forbearance agreement, a condition or term or a permit or license, or other method approved by the State Water Board. Provides that the State Water Board shall prioritize processing registrations that are coupled with instream flow dedications accomplished pursuant to Water Code § 1707.
- 4) Requires a registrant for small irrigation use to include a copy of a restoration management permit issued by the Department of Fish and Wildlife (DFW) if the registrant has obtained such a permit related to the small restoration use.

- 5) Provides that the State Water Board shall not issue a registration for small restoration use on a stream segment where the Director of DFW has proposed streamflow requirements until the State Water Board establishes instream flow requirements as part of the general conditions applicable said stream segment.

**EXISTING LAW:**

- 1) Permits the State Water Board to issue water right registrations that permit an applicant to appropriate water for small domestic, small irrigation, or livestock stockpond uses if the applicant submits a complete registration, pays required fees, and meets other specified requirements (Water Code § 1228.1). Provides that a water right registration for small domestic, small irrigation, or livestock stockpond uses shall expire after five years unless renewed as specified (Water Code § 1228.4).
- 2) Requires the State Water Board to establish general conditions for all water right registrations. These general conditions shall include that registrations are subject to prior rights, conditions lawfully required by DFW, and requirements that diversions be constructed and water be applied to beneficial use with due diligence (Water Code § 1228.6).
- 3) Defines “small domestic use” as a direct diversion of 4,500 gallons/day or less or a diversion to storage of 10 AF or less annually for domestic, aesthetic, fire protection, recreational, or fish and wildlife uses associated with a dwelling (Water Code § 1228.1).
- 4) Defines “small irrigation use” as a diversion to storage of 20 AF or less annually for irrigation, heat control, or frost protection uses or a direct diversion of not greater than 42,000 gallons/day or up to a maximum of 20 AF annually for irrigation use (Water Code § 1228.1).
- 5) Defines “livestock stockpond” use as a direct diversion of no greater than 4,500 gallons/day or diversion for storage of no greater than 10 AF annually to a water impoundment structure constructed for livestock watering. Incidental aesthetic, fire protection, recreational, or fish and wildlife uses are permitted as part of livestock stockpond use (Water Code § 1228.1).
- 6) Requires the Director of DFW to identify streams and watercourses throughout the state for which minimum flow levels are needed to assure the continued viability of stream-related fish and wildlife resources and to prepare proposed streamflow requirements for these streams to be transmitted to the State Water Board by July 1, 1989 (Public Resources Code § 10001 and §10002).

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author, this bill “will provide a new approach to streamline the permitting process for restoration projects and small ponds that are created to reduce stress on streams during critical periods of low streamflow. This process will help encourage farmers to shift their water use to divert water during high flow periods during winter and spring in exchange for reducing existing diversions during low flow periods in summer and fall.” In addition, the author asserts this bill reduces regulatory wait times for habitat restoration projects that need a relatively small amount of water by creating an

expedited registration pathway for these projects as opposed to requiring the submission of a full water right application with the State Water Board. Finally, the author maintains that this bill will promote “multi-benefit projects that bring together the agricultural and conservation communities.”

- 2) **Background.** Water right registrations have been offered by the State Water Board since January 1, 1989, and provide an expedited pathway to acquisition of an appropriative water right for certain small projects: small domestic use, small irrigation use, and livestock stockponds. These registrations last for a term of up to five years and can be renewed for additional five-year terms if the registrant meets conditions placed upon the registration, reports their use, and pays fees. The maximum volume of water that can be diverted and stored under a registration is capped: 10 AF annually for small domestic use and livestock stockpond and 20 AF annually for small irrigation use.

According to the State Water Board, the process to apply for a water right registration proceeds as follows: “the State Water Board reviews the registration packet to ensure the submittal meets the criteria of the program. Once the review is complete, for Small Domestic Use and Livestock Stockpond registrations, the State Water Board shares the registration with [DFW] for an opportunity to develop special conditions, unless the special conditions or a waiver of conditions has already been received.” For Small Irrigation Use registrations, applicants must consult with DFW prior to submittal of a registration. After State Water Board review, the State Water Board may then issue a certificate of registration subject to any special conditions from DFW. In 2023, the State Water Board reported there were 1,004 Small Domestic registrations with a face value of 3,319 AF, 26 Small Irrigation registrations with a face value of 293 AF, and 363 Livestock Stockpond registrations with a face value of 1,767 AF that are active.

*DFW Instream Flow Program (IFP).* Through IFP (see #6 under Existing Law), DFW conducts instream flow studies to develop ecological flow criteria needed for long-term protection, maintenance, and effective stewardship of fish and wildlife resources. Instream flow is a scientifically defensible rate of water flow, measured in cubic feet per second (cfs), required at different times of the year at a specific location in a waterway necessary to maintain healthy conditions for aquatic and riparian species. The Director of DFW may transmit completed instream flow studies to the State Water Board for consideration in water allocation and appropriation actions. DFW has completed, or is in the process of completing, instream flow studies for Big Sur River, Butte Creek, Deer Creek, the Fresno River watershed, Mark West Creek, Mill Creek, Scott and Shasta Rivers, South Fork Eel River, Ventura River, and the West Fork San Gabriel River watershed. This bill prohibits the issuance of a small restoration use registration on a stream segment where DFW has made instream flow recommendations until the State Water Board incorporates such recommendations into the general requirements for said stream segment.

- 3) **Arguments in support.** The Wine Institute, a co-sponsor of this bill, asserts that the uptake in use of the existing water right registrations has fallen short of expectations when they were put in place in 2011. The Wine Institute maintains this is unfortunate because the registrations have the potential to provide “substantive environmental benefits” and that this bill will result in more registrations being filed. Finally, the Wine Institute argues “the need for this bill is greater now than ever. The atmospheric rivers and bomb cyclones we have seen in recent winters have been devastating. We also know that with climate change these

kinds of winters will become more frequent. When that happens, and we are in the midst of drought, it is essential that we capture heavy storm water flows for storage.”

- 4) **Related legislation.** AB 1024 (Aguiar-Curry) of 2023 would have exempted water right registrations for small domestic use, small irrigation, or livestock stockpond in specified northern and central California counties from lake or streambed alteration agreement requirements. AB 1024 was held in the Senate Appropriations Committee.

AB 1420 (Aguiar-Curry) of 2017 was substantially similar to AB 1024 of 2023. AB 1420 was held in the Senate Appropriations Committee.

AB 1704 (Dodd) of 2016 would have required the State Water Board to adopt general conditions for small irrigation uses by January 1, 2018, as specified. AB 1704 was held in the Senate Appropriations Committee.

AB 964 (Huffman), Chapter 579, Statutes of 2011, authorizes any person to obtain a right to appropriate water for a small irrigation use, as defined, upon registering the use with the State Water Board and applying the water to reasonable beneficial use.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of Winegrape Growers (co-sponsor)  
California Trout (co-sponsor)  
Trout Unlimited (co-sponsor)  
Wine Institute (co-sponsor)  
Sustainable Conservation

### **Opposition**

None on file

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