

Date of Hearing: April 14, 2026

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2026 (Aguiar-Curry) – As Amended April 6, 2026

SUBJECT: Water diversion: groundwater recharge: permit

SUMMARY: Makes numerous changes to existing authority and permitting processes for groundwater recharge projects. Specifically, **this bill:**

- 1) With respect to the diversion of floodflows for groundwater recharge without a permit (pursuant to Water Code § 1242.1):
 - a) Deletes the requirement that a local or regional agency must have adopted a local plan of flood control or general plan that has considered flood risk in order to provide notice that there is an imminent risk of flooding and instead simply requires that the local or regional agency be “responsible for flood management” in order to provide such notice.
 - b) Expands the definition of “floodflow” to include flows occurring downstream of a dam that is releasing water for flood control purposes as required by a U.S. Army Corps of Engineers flood control rule, a court judgment, or other binding rule.
 - c) Modifies the definition of “imminent” to mean a condition that will occur soon if flood management actions are not immediately implemented (rather than condition that will “begin in the immediate future”).
 - d) Provides that when a local agency or groundwater sustainability agency (GSA) is diverting floodflows, the diversions cease when flood control releases are no longer legally required or would interfere with downstream water rights.
 - e) Provides that diversion of floodflows from the San Joaquin River or its tributaries may only occur when the Delta is in excess conditions without restrictions.
 - f) Provides that diversion of floodflows from Delta or its tributaries other than the San Joaquin River may only occur when the Delta is in excess conditions and either of the following applies:
 - 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 ratios.
 - g) Requires any entity diverting from a waterbody that is tributary to the Delta to monitor conditions daily using the Delta Operations Summary report published on the Department of Water Resources (DWR)’s website to determine the Delta’s condition.
 - h) Defines “controlled by Old and Middle River flow” as conditions when the federal Central Valley Project (CVP) and State Water Project (SWP) are implementing one or more regulatory requirements by managing flows in Old and Middle River.

- i) Permits a person that diverts floodflows for groundwater recharge to claim credit for the beneficial use of diverted floodflows if the underground storage of the water advances the sustainability goal of an applicable groundwater sustainability plan (GSP). The credit shall be limited to the amount of water reported to the State Water Resources Control Board (State Water Board).
 - j) Provides that diversion for groundwater recharge shall not create a vested water right to divert, even of a temporary nature. States 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.
 - k) Deletes the January 1, 2029 sunset date on authorization to divert floodflows for groundwater recharge thereby allowing this method of water diversion in perpetuity.
 - l) Exempts the diversion of floodflows for groundwater recharge from the California Environmental Quality Act (CEQA).
 - m) Exempts the diversion of floodflows for groundwater recharge from Lake and Streambed Alteration Agreement (LSAA) requirements.
 - n) Provides that whether or not a floodflow diversion project is exempt from CEQA, a lead agency shall provide notice and consult with California Native American tribes consistent with existing law before carrying out a floodflow diversion project. Permits a lead agency to impose conditions on the approval of the project to avoid or mitigate impacts to tribal cultural resources.
- 2) With respect to minor applications to divert water to underground storage within or upstream of the Delta pursuant to a minor application (Water Code § 1348 *et seq.*), a 180-day temporary urgency permit (Water Code § 1425 *et seq.*), or a five-year temporary permit (Water Code § 1433 *et seq.*):
- a) Provides that the inclusion of the following permit terms shall satisfy the State Water Board's finding that a diversion will not injure legal users of water from CVP or SWP:
 - i) For diversion 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) Requires a permittee to monitor conditions daily using the Delta Operations Summary report published on DWR's website to determine the Delta's condition.
 - c) Provides a permittee may 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 SWP or CVP.

- d) Provides a permittee may divert water from the Delta or upstream of the Delta without regard to Delta conditions restrictions if the diversion has a de minimis effect on operations of SWP or CVP.
 - e) Defines “de minimis effect” as a cumulative reduction less than ten acre-feet (AF) in a single water year (October 1 through September 30).
 - f) Defines “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) Defines “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) Defines “Delta operations” as operations by which CVP and SWP divert water from the Delta.
 - i) Defines “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) Provides that an application to divert water to underground storage may be deemed a “minor application” if it is made by a private entity that has an MOU or other agreement with a GSA.
- 4) Provides that an application to divert water to underground storage may be deemed a “minor application” if the proposed diversion is substantially similar a diversion authorized by a 180-day temporary permit in the previous five years.
- 5) With respect to a minor application to divert water to underground storage (Water Code § 1345 *et seq.*):
- a) Provides the State Water Board need not conduct a field investigation if the applicant has obtained a substantially similar permit to divert water to underground storage in the previous five years and the following conditions are met:
 - i) The diversion is consistent with any applicable GSP;
 - ii) The applicant consulted with the Department of Fish and Wildlife (DFW) concerning the diversion’s impact on fish and wildlife or other instream beneficial uses and has proposed permit terms that address any impacts identified by DFW; and
 - iii) The applicant has proposed terms that incorporate Delta restrictions limitations described in #2(a)(i) and (ii), above.

- b) Requires the State Water Board, notwithstanding any other law, to notice a minor application within 30 days of its filing and allow 45 days for public comment on the minor application. Authorizes the State Water Board to extend the 45-day public comment period by up to 30 days if it finds there is good cause for doing so.
- c) Requires the State Water Board, notwithstanding any other law, to issue a decision on a minor application within 180 days of the end of the public comment period. Provides the State Water Board may delegate authority to approve a minor application to the Division of Water Rights.
- d) Provides that reconsideration of a minor application that has been denied shall be before the full State Water Board and shall, notwithstanding any other law, conclude within 90 days of the filing of a petition by the applicant unless extended with consent of the applicant.
- e) Requires the State Water Board to approve a minor application if it finds that a preponderance of the evidence shows both of the following:
 - i) The proposed diversion will not injure any legal user of water; and
 - ii) The proposed diversion would not unreasonably affect fish, wildlife, or other instream beneficial uses.
- f) Provides that if the State Water Board determines that a preponderance of the evidence does not support the findings required by #5(e)(i) and (ii), above, it shall, to the maximum extent possible based on the record, approve the application on terms that would satisfy those findings. Prohibits the State Water Board from conditioning any permit on terms involving another permit, license, or water right held by the applicant.
- g) Prohibits the State Water Board from requiring separate minor applications for consumptive (e.g., irrigation) and non-consumptive (e.g., reduced land subsidence) uses of water. Prohibits the State Water Board from requiring an applicant to describe the physical works used to convey water to underground storage, the spreading grounds, the underground reservoirs, or the method and point of measurement of water recharged to and withdrawn from underground storage.
- h) Provides that a proposed diversion upstream of the Delta shall not be deemed to injure legal uses of water by CVP and SWP or their contractors if the permit incorporates terms described in #2(a)(i) and (ii), above.
- i) Provides a minor application is exempt from CEQA and LSAA requirements if diversion will occur from the following:
 - i) Existing diversion infrastructure;
 - ii) Temporary facilities that do not require construction and have protective screens that meet specified standards to minimize impacts on fish and other aquatic life.
 - iii) Provides that whether or not a project is exempt from CEQA, a lead agency shall provide notice and consult with California Native American tribes consistent with

- existing law before carrying out a diversion project. Permits a lead agency to impose conditions on the approval of the project to avoid or mitigate impacts to tribal cultural resources.
- j) Allows minor applications on a river or stream that the State Water Board has designated as “fully appropriated.”
 - k) Prohibits the State Water Board from setting fees for a minor application that are greater than a reasonable amount based on the estimated amount of work that the application may require of the State Water Board. Prohibits the State Water Board from requiring separate minor applications or fees for consumptive and non-consumptive uses of water.
- 6) With respect to applications to divert water to underground storage pursuant to a 180-day temporary urgency permit (Water Code § 1425 *et seq.*) or a five-year temporary permit (Water Code § 1433 *et seq.*):
- a) Requires 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 in order to determine the amount of water available for diversion. Provides the “flood/recharge diversion” criteria shall only apply to diversions between December 1st and March 31st.
 - b) Requires the State Water Board to use the “location-specific diversion” criteria to the maximum extent feasible for an application to divert water from any other area of the state (i.e., the Sacramento and its tributaries) in order to determine the amount of water available for diversion. In the event that “location-specific diversion” criteria do not apply, the State Water Board shall use the “90/20 method” to determine water available for diversion.
 - c) Requires the State Water Board to adopt emergency regulations to detail the “90/20 method.” Finds adoption of these regulations is necessary and provides that emergency regulations adopted by the State Water Board to define the “90/20 method” shall remain in effect until revised.
 - d) Allows an application on a fully appropriated stream.
 - e) Provides that CEQA and LSAA requirements do not apply to the following:
 - i) Adoption of the emergency regulations;
 - ii) Issuance of a permit where the applicant is a GSA;
 - iii) The permit uses “flood/recharge diversion criteria,” “90/20 method,” or “location-specific diversion criteria” to determine water availability;
 - iv) Diversions to underground storage will support one or more recharge beneficial uses;
 - v) Diversions that use existing infrastructure or temporary facilities that utilize fish screens that meet specified criteria.

- vi) Provides that whether or not a diversion project is exempt from CEQA, a lead agency shall provide notice and consult with California Native American tribes consistent with existing law before carrying out a diversion project. Permits a lead agency to impose conditions on the approval of the project to avoid or mitigate impacts to tribal cultural resources.
- f) Defines “flood/recharge diversion” criteria as the method for calculating water availability for the Sacramento River and its tributaries upstream of the Delta from December 1st to March 31st that determines there is water available for diversion when cumulative unimpaired runoff at the point of diversion exceeds the 80th percentile of historical cumulative water year runoff on a given day and lasting until cumulative water runoff at the point of diversion is lower than the 50th percentile of historical cumulative runoff on a given day.
- g) Defines “90/20 method” as the method for calculating water availability when flows exceed the 90th percentile of historic daily flow between December 1st and March 31st and the total amount of water diverted is capped at 20% of the daily flow after downstream senior diverter demand, established instream flow requirements, and water quality objectives are satisfied.
- h) Defines “location-specific diversion criteria” as criteria for determining the water available for diversion pursuant to other methods than the 90/20 method or flood/recharge diversion and that limits diversions to between December 1st and March 31st that:
 - i) Limits diversions to a portion of daily or seasonal streamflow;
 - ii) Protects existing legal users of water, include CVP and SWP;
 - iii) Protects public trust resources;
 - iv) Allows for implementation across the specific region; and
 - v) Provides for the ability to efficiently forecast diversions, operate to diversion criteria, and promote maximum diversion opportunities pursuant to appropriate conditions.
- i) Defines “recharge beneficial uses” as beneficial uses supported by groundwater recharge projects and that may include maintenance of supply in shallow domestic wells, reductions in pumping costs, and prevention or reduction in the rate of future land subsidence.
- 7) With respect to applications to divert water to underground storage pursuant to a 180-day temporary urgency permit (Water Code § 1425 *et seq.*):
 - a) Expands the definition of “urgent need” to include diversions in a groundwater basin subject to the Sustainable Groundwater Management Act (SGMA) where diversion to recharge is needed to support the basin’s sustainability goal;
 - b) Allows initiation of an approved 180-day temporary permit to be delayed to a date than the issuance of the permit. A permittee shall notify the State Water Board within ten

days of commencing diversion under a delayed permit and the State Water Board shall maintain a list of such notifications on its website. The authorization to divert shall expire five years after diversions commence.

- c) Exempts issuance of a 180-day temporary permit from CEQA and LSAA requirements if the diversion uses existing infrastructure or temporary facilities that utilize fish screens that meet certain specifications.
 - d) Provides that whether or not a 180-permit is exempt from CEQA, a lead agency shall provide notice and consult with California Native American tribes consistent with existing law before carrying out a project using a 180-day permit. Permits a lead agency to impose conditions on the approval of the project to avoid or mitigate impacts to tribal cultural resources.
 - e) Prohibits the State Water Board from setting fees for an application for 180-day temporary permit that are greater than a reasonable amount based on the estimated amount of work that the application may require of the State Water Board. Prohibits the State Water Board from requiring separate applications or fees for consumptive and non-consumptive uses of water.
 - f) Provides that the Chief Deputy Director of the Division of Water Rights may limit diversion under temporary 180-day temporary permits in favor of competing 180-day temporary permits based on consideration of the public interest.
 - g) Provides that 180-day temporary permit may be changed upon request, including as to the locations of recharge or purposes of use.
- 8) With respect to applications to divert water to underground storage pursuant to a five-year temporary permit (Water Code § 1433 *et seq.*):
- a) Provides that water availability for a five-year permit may be determined by “flood/recharge diversion criteria,” the “90/20 method,” or “location-specific diversion criteria.”
 - b) Eliminates the State Water Board’s discretion to apply conditions to five-year permit that require the permittee to follow accounting methods and reporting requirements to prevent injury to other legal users of water.
 - c) Exempts issuance of a five-year permit from CEQA and LSAA requirements if the diversion uses existing infrastructure or temporary facilities that utilize fish screens that meet certain specifications.
 - d) Provides that whether or not a project using a 5-year permit is exempt from CEQA, a lead agency shall provide notice and consult with California Native American tribes consistent with existing law before carrying out the project. Permits a lead agency to impose conditions on the approval of the project to avoid or mitigate impacts to tribal cultural resources.
 - e) Prohibits the State Water Board from setting fees for an application for a five-year temporary permit that are greater than a reasonable amount based on the estimated

amount of work that the application may require of the State Water Board. Prohibits the State Water Board from requiring separate applications or fees for consumptive and non-consumptive uses of water.

- f) Requires an applicant to demonstrate that “flood/recharge diversion criteria,” the “90/20 method,” or “location-specific diversion criteria” apply to the application.
- g) Requires an application to include an accounting method for application of water diverted to beneficial use, including recharge beneficial uses.

EXISTING LAW:

- 1) Establishes the State Water Board (Water Code § 175 *et seq.*) to administer California’s water rights system (Water Code § 1050 *et seq.*). Authorizes the State Water Board to issue water rights (Water Code § 1250 *et seq.*), collect data on water use under water rights (Water Code § 5100 *et seq.*), enforce water right violations (Water Code § 1845 *et seq.*), and enforce the water right priority system (Water Code § 1450 *et seq.*), among other powers.
- 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 a petition for reconsideration within 90 days (Water Code § 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 (Water Code §§ 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 (see discussion under Background, below) (Water Code § 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 three 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 (Water Code 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 (Water Code § 1425 *et seq.*).

- 7) Authorizes the State Water Board to issues a temporary permit (water right) to divert water for groundwater recharge so long as the diversion does not harm other lawful users of water and meets other conditions. Temporary permits for groundwater recharge shall automatically expire after five years, unless renewed (Water Code § 1433 *et seq.*).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this 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. [This bill] 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) **Background.** Groundwater is an important source of supply for California's communities, economy, and diverse natural resources. Groundwater recharge occurs when water on the earth's surface percolates down through layers of soil and earth into aquifers. Recharge occurs naturally when it rains and when water moves through rivers, streams, and creeks. It can also occur 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.

Interest in expanding groundwater recharge has increased since the passage of SGMA in 2014. In a 2020 study reviewing GSPs developed under SGMA and submitted for critically overdrafted basins in the San Joaquin Valley, the Public Policy Institute of California (PPIC) shows that, collectively, the GSPs intend to recharge nearly 1 million acre-feet (MAF) of water annually to address groundwater overdraft.¹ 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.² 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

¹ Ellen Hanak, Jelena Jezdimirovic, Alvar Escriva-Bou, Andrew Ayres, *A Review of Groundwater Sustainability Plans in the San Joaquin Valley*, (San Francisco: PPIC, 2020), 6.

² Ibid, 1.

been available for groundwater recharge.³

The importance of groundwater recharge has also been recognized in numerous state plans and strategies:

- *The California Water Plan: Update 2023* – see Recommendations (and associated sub-actions) 2.1, 3.1, 3.3, 4.2, and 6.2.
- Governor Newsom’s *California’s Water Supply Strategy: Adapting to a Hotter, Drier Future* (August 2022) – see Action 2.1 that calls for an increase in annual groundwater recharge of 500,000 AF.
- *Water Resilience Portfolio* (2020) – see Actions 3, 5, 11, and 16.
- *The California Water Action Plan* (2014) – see Actions 2, 4, and 6.

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; as a result, many entities interested in groundwater recharge have pursued a temporary (180-day) permit instead. Whether pursuing a permanent (a process that can take more than seven years) 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 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”).⁴

2023 EOs and SB 122. To take advantage of the wet conditions in winter 2023 and capture high water flows for groundwater recharge, Governor Newsom issued Executive Order (EO) N-4-23 which, among other provisions, authorized diverters to temporarily take “floodflows” off of streams and rivers for groundwater recharge without obtaining a water right, complying with CEQA, and obtaining a LSAA. The authority in EO N-4-23 was modified and extended through EO N-7-23 and then codified into law with the passage of SB 122 in 2023. SB 122 makes various changes to the EOs, 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. 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 any rigid material, perforated, woven, or slotted that allows water to

³ Ellen Hanak, Spencer Cole, Greg Gartrell, Caitlin Peterson, *How Much Water Is Available for Recharge in the Central Valley?*, (San Francisco: PPIC, 2025), 12 and 15.

⁴ Caitlin Peterson, Ellen Hanak, Zaire Joaquín Morales, *Replenishing Groundwater in the San Joaquin Valley: 2024 Update*, (San Francisco: PPIC, 2024), 21.

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.

Governor Newsom issued EO N-16-25 in January 2025 that waived the requirement under SB 122 that flood thresholds that trigger conditions for diversion be defined in a local plan of flood control or general plan. This bill codifies this waiver.

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 bill defines the “90/20 method” in statute [see #6(g), above] 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.

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 to determine water availability. This bill provides 180-day temporary 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. This Committee conducted an Outcomes Review hearing on AB 658 on March 10, 2026 that 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.

Delta operations. A complex set of regulatory requirements and operational guidelines govern the operation of the pumping plants in the Delta for SWP and CVP. These include Water Rights Decision 1641, Biological Opinions under the federal Endangered Species Act, and COA, among others. This web of regulations and rules are designed to protect water right holders, water quality for human consumption and agriculture, and fish and wildlife. The water contributions of SWP and CVP to meet these regulatory standards reduce the water available for export from the Delta. Because of this situation, water agencies that receive exported water through the Delta are particularly attuned to additional diversions

upstream of the Delta and, as a result, have protested many water right applications for groundwater recharge projects unless the permits include terms to restrict diversions to those times when the Delta is in “excess” conditions and when other restrictions do not apply. The intent of these permit terms is to ensure that water diverted upstream of the Delta does not take water away from CVP and SWP meeting regulatory requirements or reduce the amount that can be legally exported.

This bill defines the terms “excess water conditions,” “Delta is with restrictions,” “Delta is without restrictions” [see #2(f), (g), (h), and (i), under Summary, above] that indicate when Delta operations are and are not constrained due to regulatory requirements. When these restrictions are in place, this bill limits the ability of parties to divert floodflows and to divert to underground storage under a permit. This provision is more restrictive on diversions upstream of the Delta along the San Joaquin River or its tributaries than it is upstream of the Delta along the Sacramento River and its tributaries.

Flood releases from dams. 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 water control plan, court judgment, or other binding rule.

Fully appropriated streams. Fully appropriated stream systems are those where the available water has been allocated under existing water rights so that there is insufficient supply for new water right applications. The State Water Board maintains a list of fully appropriated stream systems that was most recently updated in November 1998 with the adoption of Water Right Order 98-08. There are hundreds of streams and water bodies across the state that have been designated as fully appropriated for all or part of the year. Many rivers are designated fully appropriated from spring through fall seasons, typically the driest times of the year. The State Water Board sets procedures by which parties can petition to revise a declaration that a stream system is fully appropriated to allow the acceptance of an application for a new water right (23 California Code of Regulations § 871). This bill permits applications for temporary water right permits for groundwater recharge on fully appropriated streams.

- 3) **Arguments in support.** The Regional Water Authority (RWA) is a co-sponsor of this bill and contends that it will “significantly enhance the ability to increase the amount of groundwater recharge providing for water supply reliability and groundwater sustainability while maintaining existing protections for water right holders, Delta protections with operations of [SWP] and [CVP], and the environment.” RWA notes that groundwater recharge is “statewide solution for water supply reliability and groundwater sustainability” and asserts that groundwater recharge efforts cannot be scaled to meet the state’s goals without changes to the existing permitting process that this bill proposes. RWA concludes that “it is clear that we all lose if California cannot recharge its aquifers.”

The Northern California Association (NCWA) is also a co-sponsor of this bill and indicates that work done by MBK Engineers shows that “in 2023 (a wet year) the SWRCB issued 2 permits that allowed for 21,200 [AF]; yet only 119 [AF] was diverted. In 2024 (a wet year), the [State Water Board] issued 5 permits for a maximum of 39,350 [AF]; yet only 42 [AF] was diverted for recharge, all due to limitations in the permits.” NCWA argues that this result demonstrates that “the existing permitting system is not enough: we need targeted, meaningful changes that enable us to recharge our basins and protect California from the long-term effects of drought and climate change.”

- 4) **Oppose unless amended.** Defenders of Wildlife (DOW) has taken an oppose unless amended position on this bill. DOW is very concerned about the reliance on Delta conditions that this bill proposes as existing Delta operations are resulting in harm to fish and wildlife and because water quality standards in the Delta have not been updated in over 30 years: “Therefore, this bill’s proposed changes to Bay-Delta diversion criteria, including defining what is “excess” water in the system, is built on a degraded baseline of protections for an Estuary that is in severe decline, especially since the Legislature codified Water Code Section 1242.1 in 2023.” DOW maintains this bill undercuts the State Water Board’s authority and urges the Committee to strike sections of this bill pertaining to diversion of floodflows, protests on minor applications, CEQA and LSAA exemptions, and diversion of flood releases and to make changes to address flood liability to allow more time to work on the many substantive issues in this bill. Finally, DOW states “We are at a critical point in water management, for California’s communities and wildlife... Without additional amendments, [this bill] would exacerbate this ongoing situation and continue the inappropriate and unsustainable reliance on pumped water from the Bay-Delta ecosystem.”
- 5) **Arguments in opposition.** Friends of the River (FOR) opposes this bill and argues that “the diversion of floodflows requires the careful development of a clear, comprehensive, and well thought out regulatory framework” and that the State Water Board is best positioned such a framework as the State Water Board “has the legal expertise necessary to ensure that existing statutory and regulatory requirements are incorporated into such a framework. The [State Water Board] also has the technical expertise to analyze the effects on water supply, water quality, and ecosystem health of the potential components of the framework.” In contrast, FOR contends this bill will make it “easy to divert flows under a remarkably broad range of conditions outside of true flood conditions...that are not actually floodflows.” FOR maintains that this bill will likely lead to adverse impacts on fish and wildlife as “the recovery and viability of many aquatic species depend to a large extent on flows greater than those required by regulation.” Finally, FOR states this bill would “legislate a permanent ‘urgent need’ for water diversions, rewarding past overuse of groundwater with an unregulated means of overusing surface water.”
- 6) **Policy consideration.** Recent federal action to implement “Action 5” in December 2025 for CVP operations, demonstrate the fact that the rules and guidelines for Delta operations are not set in stone and can be changed administratively. This raises the question of whether such rules should be codified as this bill proposes to do. Further, it appears that the regulations and rules governing Delta operations since “Action 5” are not as protective of water quality and fish and wildlife as they once were.
- 7) **Proposed committee amendments.** This bill makes many changes to existing law that substantially limit the State Water Board’s ability to exercise its discretion when issuing

water right permits for groundwater recharge. The Committee may wish to request that the author consider the following amendments to address this concern and eliminate duplicative language:

- Retain sunset on authority to divert floodflows without a permit, but extend from January 1, 2029 to January, 1, 2034.
- Refine language regarding ability of a person that uses authority to divert floodflows to claim credit to put diverted floodflows to beneficial use.
- Amend definition “recharge beneficial uses” to apply only to nonconsumptive uses of recharged water that address an undesirable result under SGMA.
- Limit language prohibiting State Water Board from describing a groundwater recharge project’s infrastructure in the associated permit to not identifying specific groundwater wells.
- Delete sections allowing applications on fully appropriated streams. Replace with permissive language to allow applications on stream’s that have multi-sector agreements to address co-equal water supply reliability and environmental goals.
- Delete limitations on fees set by State Water Board and instead adopt language to direct the State Water Board to set fees for temporary permits at levels to encourage applications.
- Make technical and clarifying changes.

*See the attachment to this analysis for a detailed mock-up of the amendments described above.

- 8) **Dual referral.** This bill has also been referred to the Assembly Natural Resources Committee.
- 9) **Related legislation.** SB 1390 (Caballero) of 2024 would have made numerous changes to the SB 122 authority to temporarily divert floodflows for groundwater recharge without a permit. SB 1390 died on the Assembly floor.

AB 2060 (Soria) of 2024 would have exempted a temporary urgency permit for diversion to underground storage from LSAA requirements if specified conditions are met. AB 2060 died on the Senate floor.

SB 122 (Committee on Budget and Fiscal Review), Chapter 51, Statutes of 2023, exempted, among other substantive provisions, the diversion of floodflows for groundwater recharge from requirements to obtain a water right and other permits if specified conditions are met (see discussion under Background, above).

AB 830 (Soria) of 2023 was similar to AB 2060 (Soria). AB 830 was held in the Senate Appropriations Committee.

AB 658 (Arambula), Chapter 678, Statutes of 2019, authorizes a GSA or other local agency

to apply for a five-year temporary permits to divert water to underground storage if certain requirements are met.

AB 1427 (Eggman) of 2018 would have defined the storing of water underground as a beneficial use. AB 1427 was held in the Assembly Appropriations Committee.

AB 2649 (Arambula) of 2018 was substantially similar to AB 658 until it was amended late in the legislative process to address State Water Project contracts. AB 2649 was held in the Senate Rules Committee.

AB 647 (Eggman) of 2015 was substantially similar to AB 1427. AB 647 was held in the Senate Natural Resources and Water Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Association of California Water Agencies
California Water Association
Northern California Water Association
Regional Water Authority

Oppose unless amended

Defenders of Wildlife
San Joaquin Tributaries Authority

Opposition

California Sportfishing Protection Alliance
Friends of the River
Restore the Delta

Analysis Prepared by: Pablo Garza / W., P., & W. / (916) 319-2096

ATTACHMENT: MOCK-UP OF COMMITTEE AMENDMENTS

Based on As Amended In Assembly 4/7/26 version

...

SEC. 2. Section 1242.1 of the Water Code is amended to read:

1242.1. The diversion of floodflows for groundwater recharge shall not require an appropriate water right if all of the following conditions are met:

(a) (1) A local or regional agency responsible for flood management has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice, that flows downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.

(2) As used in this section, “floodflow” means any of the following:

(A) Where a water body is subject to a defined flood stage, flows in excess of flood stage where actions are necessary to avoid threats to human health and safety.

(B) (i) Except as provided in clause (ii), where a water body is not subject to a defined flood stage, surface water escaped from or is likely to imminently escape from a channel or water body causing or threatening to cause inundation of residential or commercial structures, or roads needed for emergency response. Likely imminent escape from a channel or water body shall be demonstrated by measured flows in excess of the maximum design capacity of a flood control project, where such a project is present and the maximum design capacity is readily available information.

(ii) This subparagraph does not apply to flows that inundate wetlands, working lands, or floodplains, events that constitute a “design flood,” groundwater seepage, or waters confined to a “designated floodway.”

(C) Where flows would inundate ordinarily dry areas in the bed of a terminal lake to a depth that floods dairies and other ongoing agricultural activities, or areas with substantial residential, commercial, or industrial development.

(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 judgment, or other binding rule.

(3) As used in this subdivision, “imminent” means a high degree of confidence that a condition will occur soon if flood management actions are not immediately implemented.

(4) As used in this section, “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.

(b) (1) Except as provided in paragraph (2), the diversions cease when the flood conditions described in the public notice provided pursuant to subdivision (a) have abated to the point there

is no longer a risk of flooding and inundation of land, roads, or structures downstream of the point of diversion.

(2) When a ~~person or entity local agency or groundwater sustainability agency~~ is diverting floodflow, the diversions cease when the flood control releases are no longer legally required or would interfere with any priority water right on the stream that the diversions occur from or downstream of that stream.

(c) Any water diverted is not diverted to, and will not be applied to, any of the following:

(1) Any barns, ponds, or lands where manure or waste from an animal facility that generates waste from the feeding and housing of animals for more than 45 days per year in a confined area that is not vegetated are applied.

(2) Any agricultural field that has been identified as an outlier with respect to nitrogen application by any of the following:

(A) The board.

(B) The appropriate regional board.

(C) An agricultural coalition charged with implementation of the Irrigated Lands Regulatory Program.

(3) Any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns.

(4) Any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purpose of groundwater recharge or managed wetlands.

(d) (1) With respect to diversions from water tributaries to the Sacramento-San Joaquin Delta (Delta), water rights holders are not making releases of stored water or reoperating facilities to provide flow for the purposes of meeting water quality control plan or endangered species requirements in the Delta at the time of the diversion.

(2) For a diversion from the San Joaquin River or its tributaries upstream of Vernalis, water may be diverted only when the Delta is in excess water conditions and the Delta is without restrictions.

(3) With respect to all other diversions from the Delta or its tributaries, water may be diverted only when the Delta is in excess water conditions and either of the following applies:

(A) The Delta is without restrictions.

(B) 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.

(4) For diversions pursuant to paragraphs (1), (2), and (3), the diverter shall monitor conditions daily using the Delta Operations Summary report published on the internet website of the department daily, or a successor to that internet website adopted by the department, to determine the Delta's condition and whether diversions are authorized pursuant to the permit.

(5) For purposes of paragraph (3), the term "controlled by Old and Middle River flow" means 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.

(e) The diversion of floodflows for groundwater recharge uses the following as part of the diversion:

(1) Either existing diversion infrastructure or temporary pumps.

(2) Existing groundwater recharge locations, where available.

(3) No new permanent infrastructure or permanent construction.

(4) For diversions directly from rivers or streams, protective screens on temporary pump intakes to minimize the impacts of diversion to fish and other aquatic life. Such screens shall be constructed of any rigid material, perforated, woven, or slotted, that provides water passage while physically excluding fish. The screen face shall be parallel to the flow and adjacent to the water's edge. The upstream and downstream transitions to the screen structure shall be designed and constructed to minimize eddies upstream of, in front of, and downstream of the screen, while minimizing entrainment to the degree feasible. Prior to implementing this paragraph, the Department of Fish and Wildlife shall conduct at least one public workshop to review recommended design parameters and ranges of scenarios for deployment and use of protective screens. These recommendations and any other guidelines provided by the Department of Fish and Wildlife on the implementation of this paragraph shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

~~(f) (1) The person or entity making the diversion for groundwater recharge may claim credit for the beneficial use of the diversion and recharge if the underground storage of the water advances the sustainability goal of a groundwater basin pursuant to Part 2.74 (commencing with Section 10720) of Division 6 and the groundwater sustainability agency with authority over the area where the diverted water recharges the applicable basin authorized the credit. The credit claimed shall be limited to the amounts of water reported in the filings required by subdivision (g).~~ Diversion for groundwater recharge pursuant to this section shall not create 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.

(2) In a groundwater basin being managed pursuant to a groundwater sustainability plan that the department has determined is likely to achieve the sustainability goal for the basin pursuant to Chapter 10 (commencing with Section 10733) of Part 2.74 of Division 6 of the Water Code, including a determination under Section 10733, the groundwater sustainability agency may grant a person or entity making the diversion an allocation credit. The allocation

credit granted by the groundwater sustainability agency shall not exceed the amounts of water reported in the filings required by subdivision (g).

(g) (1) The person or entity making the diversion for groundwater recharge files all of the following with the board and with any applicable groundwater sustainability agency, as defined in Section 10721, for the basin:

(A) A notice that provides the information specified in subparagraphs (A) through (C), inclusive, of paragraph (2), 48 hours before whenever feasible, and in no event later than 48 hours after initially commencing diversion of floodflows for groundwater recharge.

(B) A preliminary report no later than 14 days after initially commencing diversion of floodflows for groundwater recharge.

(C) A final report no later than 15 days after diversions cease.

(2) The preliminary and final reports shall do all of the following:

(A) Identify the person or entity making the diversion for groundwater recharge.

(B) Provide the Global Positioning System (GPS) coordinates for the point of diversion, a map identifying the approximate area inundated by the floodflows, and the corresponding assessor parcel numbers.

(C) Identify the time when diversions of floodflows to groundwater recharge commenced, and, for final reports, when diversions ceased.

(D) Provide an estimate, as of the report's date, of the amount of floodflows diverted for groundwater recharge.

(h) The diversion of floodflow for groundwater recharge pursuant to this section shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code and Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. Notwithstanding any other law, and regardless of whether a project described in this subdivision is exempt from environmental review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other law, a lead agency shall provide notice to and consult with California Native American tribes in accordance with Sections 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3 of the Public Resources Code before approving or carrying out a project described in this subdivision, and a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.

(i) This section shall only apply to diversions commenced before January 1, 2034.

SEC. 3. Section 1267 is added to the Water Code, immediately following Section 1266, to read:

1267. (a) (1) For applications to divert water within or upstream of the Delta to underground storage pursuant to a minor application, as defined in Section 1348, a temporary urgency permit pursuant to Article 1.5 (commencing with Section 1425) of Chapter 6.5 of this part, or a temporary permit for diversion to underground storage pursuant to Article 2 (commencing with Section 1433) of Chapter 6.5, the inclusion of the language from paragraphs (2) and (3) in the

application as proposed permit terms, and its adoption in the applicable permit, shall satisfy the state board's finding that water may be diverted and used without injury to the legal users of water from the Central Valley Project or the State Water Project, including the United States Bureau of Reclamation, the department, or any contractors to the projects.

(2) For a diversion from the San Joaquin River or its tributaries upstream of Vernalis, water may be diverted only when the Delta is in excess water conditions and the Delta is without restrictions.

(3) With respect to all other diversions from the Delta or its tributaries, water may be diverted only when the Delta is in excess water conditions and either of the following applies:

(A) The Delta is without restrictions.

(B) The Delta is with restrictions, but Delta operations are controlled only by Old and Middle River flow or San Joaquin River inflow-to-export ratio.

(4) The permittee shall monitor conditions daily using the Delta Operations Summary report published on the internet website of the department daily, or a successor to that internet website adopted by the department, to determine the Delta's condition and whether diversions are authorized pursuant to the permit.

(b) Notwithstanding subdivision (a) ~~and any water availability analysis on which the applicable permit is based~~, water may be diverted pursuant to the applicable permit if, in addition to compliance with other permit terms not related to Delta conditions, the permittee has an agreement with the department and, as necessary, the United States Bureau of Reclamation to ensure that the permittee's diversions upstream of the Delta do not injure the department or the United States Bureau of Reclamation as a legal user of water by adversely impacting the operations of the State Water Project or the Central Valley Project.

(c) Notwithstanding subdivision (a), a de minimis effect on the operations of the State Water Project or the Central Valley Project shall not be an injury to the department or the Bureau of Reclamation as a legal user of water.

(d) For purposes of this section, the following definitions apply:

(1) "Controlled by Old and Middle River flow" means 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.

(2) "De minimis ~~effect~~reduction" means a cumulative reduction of less than 10 acre-feet in a single water year.

(3) "Delta" means the area defined in Section 12220.

(4) "Delta is with restrictions" means conditions when the Central Valley Project and State Water Project operations in the Delta are constrained by any nondiscretionary requirement, including any requirement for the protection of water quality and endangered species.

(5) “Delta is without restrictions” means conditions when Central Valley Project and State Water Project operations in the Delta are not constrained by any nondiscretionary requirements, including any requirements for the protection of water quality and endangered species.

(6) “Delta operations” means the operations by which the Central Valley Project and the State Water Project divert water from the Delta.

(7) “Excess water conditions” means conditions as 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.

(8) “Water year” means the period beginning on October 1 of one calendar year and continuing to September 30 of the following calendar year.

SEC. 4. Section 1345 of the Water Code is amended to read:

1345. (a) Except as provided in subdivision (b), the Division of Water Rights shall conduct a field investigation of all minor protested applications. The board shall notify the parties of the field investigation not less than 20 days prior to conducting the field investigation, to enable the parties to attend and present information to the board.

(b) The Division of Water Rights is not required to conduct a field investigation for an application defined as a minor application pursuant to subdivision (b) of Section 1348 if either of the following conditions is met:

(1) The Division of Water Rights determines, in its discretion, that a field investigation will not substantially expedite consideration of the application and a hearing should be conducted pursuant to Section 183. If the Division of Water Rights makes that determination, Sections 1346 and 1347 do not apply to the application.

(2) The application involves a diversion pursuant to paragraph (1) of subdivision (b) of Section 1348 and includes information on the applicant’s experience pursuant to past temporary permits, including all of the following:

(A) Consistent with the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6), documentation of the consistency of the proposed diversion and recharge with the groundwater sustainability plan that applies to the area where the water was recharged.

(B) Documentation showing the applicant took both of the following actions:

(i) The applicant consulted with the Department of Fish and Wildlife concerning the diversion’s effects, if any, on fish, wildlife, and other instream beneficial uses.

(ii) The applicant provided the Department of Fish and Wildlife a copy of the application.

(C) Proposed terms that *address accomplished both of the following:*

~~(i) Addressed~~ potential effects on fish, wildlife, or other instream beneficial uses identified through the applicant’s consultation with the Department of Fish and Wildlife pursuant to subparagraph (B).

~~(ii) Incorporated the applicable terms of subdivision (b) of Section 1267 if the proposed diversion would occur upstream of the Sacramento-San Joaquin Delta.~~

SEC. 5. Section 1347 of the Water Code is amended to read:

1347. (a) Subject to subdivision (b) and based upon the field investigation and any other information obtained pursuant to this article, the Division of Water Rights shall issue a decision unless the board in its discretion determines that additional proceedings should be conducted pursuant to Section 183. A decision of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with Section 1120) of Part 1.

(b) For a minor application pursuant to subdivision (b) of Section 1348, the board shall consider that application as follows:

(1) Notwithstanding any other law, the board shall give public notice of the application within 30 days of the filing of the application and allow 45 days from the date of the notice for the filing of comments on the application. The board may extend that time by up to 30 days if the board makes a written finding of good cause based on unique circumstances associated with the individual application.

(2) Notwithstanding any other law, the board shall issue a decision on the application within 180 days of the deadline for submitting comments on the application. The board may delegate its authority to issue a decision on the application to the Division of Water Rights, subject to the board's reconsideration of the division's decision pursuant to Article 2 (commencing with Section 1122) of Chapter 4 of Part 1. Notwithstanding any other law, the board's reconsideration proceeding shall conclude within 90 days of the filing of a petition for reconsideration and that period shall not be extended without the applicant's consent.

(3) The board shall approve the application if the board determines that a preponderance of the evidence shows both of the following:

(A) 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.

(B) The proposed diversion would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(4) If the board determines that the preponderance of the evidence does not support the findings required by paragraph (3) based on the applicant's proposed terms, the board shall, to the maximum extent possible based on the record, approve the application based on terms that the board determines will cause the applicant's diversion to satisfy the provisions of paragraph (3). The board shall not condition any permit on any terms involving another permit, license, or water right held by the applicant or to avoid or mitigate impacts that are not caused by the diversion proposed by the application.

(5) The board shall not require separate applications for consumptive and nonconsumptive uses of water that would be diverted pursuant to the application. ***Notwithstanding any other provision of law, an application, and a resulting permit, that includes one or more recharge beneficial uses sufficiently describes the place of use, and the points of rediversion from groundwater, if***

it depicts the geographic area in which recharge will occur without identifying specific wells. ~~Notwithstanding Section 733 of Title 23 of the California Code of Regulations, the board shall not require that the permit describe the physical works used to convey water to underground storage, the spreading grounds, and the underground reservoirs or the method and point of measurement of water recharged to, and withdrawn from, underground storage.~~

~~(6) For an application involving diversions upstream of the Sacramento-San Joaquin Delta, those diversions will not cause injury to the legal uses of water by the Central Valley Project, the State Water Project, or any of those projects' contractors if the permit incorporates the applicable terms stated in subdivisions (b), (c), and (d) of Section 1267.~~

(7) (A) The board's issuance of a permit pursuant to this subdivision shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code and Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, if the permitted diversions will occur through either of the following:

(i) Existing diversion infrastructure.

(ii) Temporary facilities that meet both of the following conditions:

(I) Do not require construction.

(II) If they divert directly from a river or stream, the facilities 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.

(B) Notwithstanding any other law, and regardless of whether a project described in subparagraph (A) is exempt from environmental review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other law, a lead agency shall provide notice to and consult with California Native American tribes in accordance with Sections 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3 of the Public Resources Code before approving or carrying out a project described in subparagraph (A), and a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.

~~(8) The board may consider an application pursuant to subdivision (b) of Section 1348 and issue a permit based on that application pursuant to this section notwithstanding any declaration that the relevant stream system is fully appropriated pursuant to Article 1.3 (commencing with Section 1205) of Chapter 1. Notwithstanding the board's declaration that a stream reach is fully appropriated pursuant to Article 1.3 (commencing with Section 1205) of Chapter 1, the board may consider an application for diversions from that reach under this section if that reach is subject to an agreement or memorandum of understanding among water suppliers and non-governmental organizations concerning the coequal goals of reliable water supplies and preservation of the reach's environmental values.~~

~~(9) In setting fees for minor applications pursuant to this section for purposes of Chapter 8 (commencing with Section 1525), the board shall set those fees to reflect not more than a reasonable amount for the estimated amount of work that the application may require for the board to reach a decision on the application.~~ The board shall not require separate applications

or fees for consumptive and nonconsumptive uses of diverted water. *In setting fees for applications under this section pursuant to Chapter 8 (commencing with Section 1525), the board shall set those fees at a level to encourage those applications.*

...

SEC. 7. Article 1 (commencing with Section 1420) is added to Chapter 6.5 of Part 2 of Division 2 of the Water Code, to read:

Article 1. General Provisions

1420. This article applies to applications for temporary urgency permits pursuant to Article 1.5 (commencing with Section 1425) and for temporary permits for diversion to underground storage pursuant to Article 2 (commencing with Section 1433). Notwithstanding any other law, for applications for permits that this article applies to, this article's terms determine the availability of water for diversion.

1421. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

- (a) "90/20 method" means the method for calculating water availability when flows exceed the 90th percentile of historic daily flow between December 1 and March 31, and the total amount of water diverted is capped at 20 percent of the daily flow after downstream senior diverter demand, established instream flow requirements, and consideration of water quality objectives are satisfied.
- (b) "Basin" has the same meaning as defined in Section 10721.
- (c) "Delta" means the Sacramento-San Joaquin Delta.
- (d) "Diversion criteria" means specific thresholds that determine when a permittee may divert, based on flows. Diversion criteria are in addition to any other conditions placed on a permit.
- (e) "Flood/recharge diversion criteria" means 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 during the period of December 1 to March 31, inclusive, within a water year when, on the date of measurement, cumulative unimpaired runoff as of that date exceeds the 80th percentile of historical cumulative water year runoff at the point of diversion, or the nearest measuring point, and lasting until that cumulative water year runoff is lower than the 50th percentile of historical cumulative runoff at the point of diversion, or the nearest point of measurement, as measured against historical cumulative water year runoff measured on that date.
- (f) "Groundwater sustainability agency" has the same meaning as defined in Section 10721.
- (g) "Groundwater sustainability plan" has the same meaning as defined in Section 10721.
- (h) "Local agency" has the same meaning as defined in Section 10721.

(i) “Location-specific diversion criteria” means 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 all of the following components:

- (1) Limits diversion to the December 1 to March 31, inclusive, period and from higher streamflows.
- (2) Limits diversions to a portion of daily or seasonal streamflow.
- (3) Protects existing legal users of water, including the Central Valley Project and the State Water Project.
- (4) Protects public trust resources.
- (5) Allows for implementation across the specific region.
- (6) Provides for the ability to efficiently forecast diversions, operate to diversion criteria, and promote maximum diversion opportunities pursuant to appropriate conditions.

(j) “Recharge beneficial uses” means *the recharge of water to groundwater for the non-consumptive purpose of preventing or mitigating one or more undesirable results as defined in Section 10721* ~~beneficial uses supported by groundwater recharge projects. Those uses may include, but are not limited to, maintenance of supply in shallow domestic wells, reductions in pumping costs, and prevention or reduction in the rate of future land subsidence based on the severity and likelihood of threatened subsidence.~~

(k) “Sustainability goal” has the same meaning as defined in Section 10721.

(l) “Temporary permit” means a temporary urgency permit issued pursuant to Article 1.5 (commencing with Section 1425) or a temporary permit for diversion to underground storage issued pursuant to Article 2 (commencing with Section 1433).

1422. (a) In determining the availability of water for applications and permits that this article applies to, the board shall apply the following criteria:

(1) For applications for permits for one or more diversions from the Sacramento River or a tributary to the Sacramento River upstream of the Delta, the board shall apply the flood/recharge diversion criteria. Those criteria shall only determine the availability of water during the December 1 to March 31, inclusive, period, inclusive, and the ultimate permit shall not authorize the diversion of more than 20 percent of daily streamflow at any point of diversion.

(2) For other areas of the state, the board shall apply location-specific diversion criteria to the maximum extent possible, and shall apply the 90/20 method where it is not possible to use location-specific diversion criteria.

(b) (1) The board shall adopt emergency regulations detailing the 90/20 method.

(2) The board’s adoption of emergency regulations pursuant to paragraph (1), and any amendment to those regulations, shall be considered by the Office of Administrative Law, as necessary, for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the

Government Code, any emergency regulations adopted pursuant to this subdivision shall remain in effect until revised by the board.

(c) Notwithstanding the board's declaration that a stream reach is fully appropriated pursuant to Article 1.3 (commencing with Section 1205) of Chapter 1, the board may consider an application for diversions from that reach if that reach is subject to an agreement or memorandum of understanding among water suppliers and non-governmental organizations concerning the coequal goals of reliable water supplies and preservation of the reach's environmental values. ~~The board may consider any application that this article applies to, and issue a permit based on that application, if water availability for that application and permit is determined pursuant to this section and notwithstanding any declaration that the relevant stream system is fully appropriated pursuant to Article 1.3 (commencing with Section 1205) of Chapter 1.~~

1423. (a) The requirements of Division 13 (commencing with Section 21000) of the Public Resources Code ~~and Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code~~ do not apply to ~~either of the following:~~

~~(1) Adoption of emergency regulations pursuant to this article.~~

~~(2) Issuance of a temporary permit subject to this article that meets all of the following criteria:~~

~~(A) The applicant is a groundwater sustainability agency or a local agency.~~

~~(B) The water that the temporary permit authorizes diversion of is limited to the water identified pursuant to the flood/recharge diversion criteria, the 90/20 method, or location-specific diversion criteria, as applicable to that temporary permit.~~

~~(C) Diversions are to underground storage supporting one more recharge beneficial uses.~~

~~(D) If for a 180-day temporary permit issued pursuant to Section 1425, the diverter's facilities comply with subdivision (e) of Section 1425.~~

~~(E) If for a five-year temporary permit issued pursuant to Section 1433.1, the diverter's facilities comply with subdivision (d) of Section 1433.1.~~

(b) Notwithstanding any other law, and regardless of whether a project described in paragraph (1) or (2) of subdivision (a) is exempt from environmental review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other law, a lead agency shall provide notice to and consult with California Native American tribes in accordance with Sections 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3 of the Public Resources Code before approving or carrying out a project described in paragraph (1) or (2) of subdivision (a), and a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.

...

SEC. 9. Section 1425 of the Water Code is amended to read:

1425. (a) Any person, whether or not an applicant, permittee, or licensee pursuant to provisions of this division other than this article, who has an urgent need to divert and use water may apply for, and the board may issue, a conditional, temporary permit without complying with other procedures or provisions of this division, but subject to all requirements of this article.

(b) Prior to issuing a permit pursuant to this article, the board shall make all of the following findings:

(1) The applicant has an urgent need for the water proposed to be diverted and used.

(2) The water may be diverted and used without injury to any lawful user of water.

(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of water, without unreasonable effect upon fish, wildlife, and other instream beneficial uses, and will support the application of water to one or more beneficial uses, which may include recharge beneficial uses.

(c) “Urgent need,” for the purposes of this article, means either of the following:

(1) The existence of circumstances from which the board may in its judgment conclude that the proposed temporary diversion and use is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find an applicant’s need to be urgent if the board in its judgment concludes, if applicable, that the applicant has not exercised due diligence either in making application for a permit pursuant to provisions of this division other than this article, or in pursuing that application to permit.

(2) In a basin that requires a groundwater sustainability plan pursuant to the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6), the application of a local agency, groundwater sustainability agency, or private entity operating pursuant to a memorandum of understanding or other agreement with a groundwater sustainability agency to divert and use water determined to be available pursuant to Section 1422 to augment the basin’s recharge in order to support implementation of the sustainability goal in that basin.

(d) The board may delegate to any officer or employee of the board all or any of its functions pursuant to this article, as provided in Section 7.

(e) A temporary permit issued pursuant to this section may authorize the diversions to be initiated after the date of the permit’s issuance, if the diversions pursuant to that permit are only authorized during the 180-day period after diversions commence. The applicant shall request approval of a delayed initiation period as part of the applicant’s initial filing of the application. When delayed initiation of diversion is authorized pursuant to this section, the permittee shall inform the board of commencing of diversion within 10 days of initiation of diversion pursuant to the temporary permit. The board shall maintain a list of notifications received on its internet website.

(f) (1) The board's issuance of a temporary permit to address an urgent need shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code and Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, if the permitted diversions occur through either of the following:

(A) Existing diversion infrastructure.

(B) Temporary facilities that meet both of the following conditions:

(i) Do not require construction.

(ii) If the facilities divert directly from a river or stream, the facilities have protective screens on their intakes to minimize the impacts of diversions to fish and other aquatic life, with those screens being constructed of any rigid material, perforated, woven, or slotted, and provides water passage while physically excluding fish.

(2) Notwithstanding any other law, and regardless of whether a project described in paragraph (1) is exempt from environmental review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other law, a lead agency shall provide notice to and consult with California Native American tribes in accordance with Sections 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3 of the Public Resources Code before approving or carrying out a project described in paragraph (1), and a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.

(g) ~~In setting fees for applications for temporary urgency permits pursuant to this article for purposes of Chapter 8 (commencing with Section 1525), the board shall set those fees to reflect not more than a reasonable amount for the estimated amount of work that the application may require for the board to reach a decision on the application.~~ The board shall not require separate applications or fees for consumptive and nonconsumptive uses of diverted water. In setting fees for applications under this section pursuant to Chapter 8 (commencing with Section 1525), the board shall set those fees at a level to encourage those applications.

...

SEC. 13. Section 1433.1 of the Water Code is amended to read:

1433.1. (a) A groundwater sustainability agency or a local agency, whether or not an applicant, permittee, or licensee pursuant to provisions of this division other than this article, may apply for, and the board may issue, a conditional temporary permit for diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin under the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6), without complying with other procedures or provisions of this division, subject to all requirements of this article. An application may be filed pursuant to this article whether or not there is an adopted groundwater sustainability plan, an interim plan, or an alternative pursuant to Section 10733.6 for the basin.

(b) Before issuing a permit pursuant to this article, the board shall make all of the following findings based upon a preponderance of the evidence:

(1) The proposed diversion is to underground storage for beneficial use consistent with subdivision (a).

(2) The water may be diverted and used without injury to any lawful user of water, including the user's ability to meet water quality objectives. This finding may be satisfied by demonstrating both of the following:

(A) The proposed diversion to underground storage will occur only when both of the following conditions are satisfied:

(i) Flow in the source water body exceeds the claims of all known legal users who divert water downstream of the proposed point of diversion.

(ii) Unregulated flow in the source water body will be sufficient below the proposed point of diversion to meet instream flow requirements and water quality objectives.

(B) Notwithstanding subparagraph (A), water is available for appropriation as determined pursuant to Section 1422.

(C) To prevent injury to existing legal users of water, storage and extraction from storage in the basin pursuant to the proposed permit will be subject to accounting methods and reporting requirements established by any of the following:

(i) A groundwater sustainability plan.

(ii) An interim plan.

(iii) An alternative approved pursuant to Section 10733.6.

(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses pursuant to this section or Section 1422. If the permit does not include a condition proposed by the Department of Fish and Wildlife pursuant to paragraph (2) of subdivision (c) of Section 1433.2, the board shall include in the findings an explanation of why the condition is not included, provided that if applicable, Section 1422 shall determine the water available for appropriation.

(4) The proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest.

(5) If there is an adopted groundwater sustainability plan, an interim plan, or an alternative pursuant to Section 10733.6 for the basin, the proposed diversion to underground storage is consistent with that plan or alternative.

(c) The board may delegate to any officer or employee of the board all or any of its functions pursuant to this article, as provided in Section 7.

(d) (1) The board's issuance of a permit pursuant to this article is exempt from the requirements of Division 13 (Commencing with Section 21000) of the Public Resources Code and Chapter 6 (Commencing with Section 1600) of Division 2 of the Fish and Game Code, if the permitted diversions will occur through either of the following:

(A) Existing diversion infrastructure.

(B) Temporary facilities that meet both of the following conditions:

(i) Do not require construction.

(ii) If the facilities divert directly from a river or stream, the facilities have protective screens on their intakes to minimize the impacts of diversions to fish and other aquatic life, with those screens being constructed of any rigid material, perforated, woven, or slotted, and provides water passage while physically excluding fish.

(2) Notwithstanding any other law, and regardless of whether a project described in paragraph (1) is exempt from environmental review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other law, a lead agency shall provide notice to and consult with California Native American tribes in accordance with Sections 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3 of the Public Resources Code before approving or carrying out a project described in paragraph (1), and a lead agency may impose conditions of approval on the project to avoid or mitigate potential impacts to tribal cultural resources.

~~(c) In setting fees for applications for temporary urgency permits pursuant to this article for purposes of Chapter 8 (commencing with Section 1525), the board shall set those fees to reflect not more than a reasonable amount for the estimated amount of work that the application may require for the board to reach a decision on the application.~~ The board shall not require separate applications or fees for consumptive and nonconsumptive uses of diverted water. ***In setting fees for applications under this section pursuant to Chapter 8 (commencing with Section 1525), the board shall set those fees at a level to encourage those applications.***

SEC. 14. Section 1433.2 of the Water Code is amended to read:

1433.2. (a) The application for a temporary permit shall be completed in accordance with Section 1260 and shall be accompanied by any maps, drawings, and other data that may be required by the board.

(b) (1) An applicant shall pay an application fee and, if a permit is issued, a permit fee, both in amounts calculated in accordance with the provisions of Chapter 8 (commencing with Section 1525).

~~(2) Consistent with Section 3 of Article XIII A of the California Constitution and the board's authority to set fees to promote the conservation and utilization of water resources in the public interest, the board may adopt reduced fees pursuant to Chapter 8 (commencing with Section 1525) for applications, petitions, and permits pursuant to this article. In setting fees for applications for temporary urgency permits pursuant to this article for purposes of Chapter 8 (commencing with Section 1525), the board shall set those fees to reflect not more than a reasonable amount for the estimated amount of work that the application may require for the board to reach a decision on the application.~~ The board shall not require separate applications or fees for consumptive and nonconsumptive uses of diverted water. ***In setting fees for applications under this section pursuant to Chapter 8 (commencing with Section 1525), the board shall set those fees at a level to encourage those applications.***

(c) In addition to subdivisions (a) and (b), an application shall include all of the following:

(1) Evidence that the applicant has completed any environmental review required by, or the project is exempt from, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). To the extent funding is available, the board shall review and comment on any notice of preparation or draft environmental document for a project subject to approval pursuant to this article, and include in the board's comments identification of any instream beneficial uses of waters of the state that may be affected by the project. This paragraph is not a limitation on the authority of the board pursuant to any other law.

(2) A notification from the Department of Fish and Wildlife that the applicant has consulted with the Department of Fish and Wildlife at least 30 days before submission of the application. If the Department of Fish and Wildlife determines that it needs additional time for review, it may provide for a longer consultation period, not to exceed 60 days. The notification shall include a copy of any conditions proposed by the Department of Fish and Wildlife.

(3) One of the following:

(A) Except as provided in subparagraphs (B) and (C), a water availability analysis that quantifies, pursuant to a range of foreseeable hydrologic conditions, the amount of unappropriated water available considering all known legal users who divert water hydrologically connected to the proposed point of diversion, effects on beneficial uses, including instream beneficial uses, and the ability to meet water quality objectives.

(B) A simplified water availability analysis, if the applicant proposes to divert water only when flow in the source water body exceeds an established or calculated flood stage, or if the applicant requests board consideration of a simplified water availability analysis prior to submittal of the application, and the deputy director finds that a simplified water availability analysis is sufficient for the board to make the findings required by subdivision (b) of Section 1433.1.

(C) A demonstration that Section 1422 applies to the application.

(4) A proposed accounting method for application of water diverted pursuant to the permit to beneficial use, including recharge beneficial uses, that is either of the following:

(A) Certified to be consistent with the groundwater sustainability plan or alternative approved pursuant to Section 10733.6 by the groundwater sustainability agency for the basin where the water is proposed to be stored or the local agency responsible for implementing the approved alternative.

(B) If there is no applicable groundwater sustainability plan or alternative approved pursuant to Section 10733.6, adequate to demonstrate beneficial use of water pursuant to the proposed permit and not inconsistent with the department's standards in Section 356.2 of Title 23 of the California Code of Regulations.