

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1024 (Aguiar-Curry) – As Amended March 2, 2023

**SUBJECT:** Water rights: small irrigation use: lake or streambed alteration agreements

**SUMMARY:** Exempts entities that hold a registration for small domestic, small irrigation, or livestock stockpond water use from the requirement to enter into a lake or streambed alteration agreement (LSAA) with the Department of Fish and Wildlife (DFW). Specifically, **this bill:**

- 1) Exempts an entity from the requirement to enter into an LSAA with DFW if that entity holds a registration for small domestic, small irrigation, or livestock stockpond water use issued by the State Water Resources Control Board (State Water Board) and the conditions specified in #2, below, are met. The exemption shall apply for the term of the registration issued by the State Water Board (typically five years).
- 2) Provides that the exemption from the requirement to obtain an LSAA applies if the entity does the following: pays LSAA fees; submits copy of any conditions placed upon the water use by DFW to DFW; and obtains confirmation from DFW that the exemption applies to the registered water use in question. DFW must notify the applicant whether the exemption applies within 60 days of receiving a registration and fee.
- 3) Exempts an entity seeking to renew a registration for small domestic, small irrigation, or livestock stockpond water use with the State Water Board from the requirement to enter into an LSAA with DFW if the conditions specified in #4, below, are met. The exemption shall apply for the term of the renewal issued by the State Water Board.
- 4) Provides the exemption from the requirement to obtain an LSAA applies to a renewal of a registration for small domestic, small irrigation, or livestock stockpond water use if the entity meets the following conditions: pays LSAA fees; provides a copy of any conditions placed upon the water use required by DFW; and obtains a determination from DFW that the water use will protect fish and wildlife resources and is subject to the exemption provided by this bill. DFW must notify the entity seeking a renewed exemption whether the exemption applies within 60 days of receiving the registration and fee.
- 5) Requires the State Water Board to give priority to adopting, on or before June 30, 2027, general conditions that apply to a permit to store water for small irrigation use during times of high streamflow in exchange for the registrant reducing diversions during periods of low streamflow, as specified. Provides that an action taken by the State Water Board to adopt general conditions shall be deemed an action taken to protect the environment for the purposes of Section 15308 of Title 14 of the California Code of Regulations (Cal. Code Regs.) so long as those actions do not result in the relaxation of existing streamflow standards.
- 6) Prohibits the authorization of a registration for a stream segment for which the Director of DFW has proposed a streamflow requirement (pursuant to Public Resources Code § 10002) until the State Water Board establishes instream flow requirements as part of the general conditions for that stream segment.

**EXISTING LAW:**

- 1) Permits the State Water Board to issue a certificate granting a right to appropriate water for small domestic, small irrigation, or livestock stockpond uses if an applicant submits a complete registration, pays required fees, and meets other requirements as specified (Water Code § 1228.1). Provides that a 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 to which all registrations of appropriations for small domestic, small irrigation, and livestock stock pond uses shall be subject. Requires that the general conditions include that all such appropriations are subject to prior rights, conditions lawfully required by DFW, and diversions be constructed and water 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 acre-feet (AF) or less annually for domestic, aesthetic, fire protection, recreational, or fish and wildlife uses associated with a dwelling.
- 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.
- 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.
- 6) Prohibits any entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from a streambed, unless DFW determines the activity will not adversely affect fish and wildlife resources or the entity enters into an agreement with DFW to take reasonable measures to protect fish and wildlife resources [i.e., a Lake and Streambed Alteration Agreement (LSAA)] (Fish and Game Code § 1602).
- 7) 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 streamline the permitting process for a farm or vineyard owner to obtain a permit from the State Water Resources Control Board to divert water into a small irrigation pond. Many vineyard and farm owners on the Central Coast and North Coast rely on water diverted from streams that support salmon, steelhead, and other threatened or endangered species like the Clear Lake Hitch. These agricultural water diversions can occur during the irrigation season when streamflow is

naturally low and juvenile salmon and steelhead are in the streams.

To provide farmers with a reliable source of water and protect fish populations during critical months, a permitting program for small irrigation ponds was created in collaboration with agricultural and environmental organizations. However, the process for obtaining the permit is time-consuming and overly-burdensome. As a result, less than 10 permits have been approved since its creation. This bill will streamline the permitting process to divert water into small irrigation ponds to encourage greater program participation and protect the habitat of salmon and steelhead populations.”

- 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 stockpond. 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 use, and pays fees. 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. At present, the State Water Board reports there are 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.

*LSAAs.* DFW issues these permits and LSAAs are required before a person, agency, or organization takes any action that: 1) diverts or obstructs the natural flow of any river, stream, or lake; 2) changes the bed, channel, or bank of any river, stream, or lake; 3) uses material from any river, stream, or lake; or 4) deposits or disposes of material into any river, stream, or lake. Water storage, floodplain restoration, flood protection, and riparian habitat restoration are all projects that typically need an LSAA. DFW reports that finalizing an LSAA has taken an average of 119 days in recent years, but that the timeline varies, largely due to whether or not the applicant submits a complete notification to start the process.

*Adoption of general conditions subject to categorical exemption from California Environmental Quality Act (CEQA).* This bill clarifies that the State Water Board’s actions to adopt general conditions for small irrigation use registrations shall be subject to a categorical exemption from CEQA (see #5 under “SUMMARY,” above). The section of regulations referenced is one of 33 categorical exemptions to CEQA; the exemptions apply to classes of projects that are generally considered to not have potential impacts on the environment. The referenced section, Cal. Code Regs. Title 14, § 15308, exempts “actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment” from CEQA.

- 3) **Arguments in support.** The Wine Institute and California Association of Winegrape Growers (sponsors) are co-sponsors of this bill and indicate that this bill is intended to make changes to increase the number of entities that utilize the Small Irrigation registration that AB ~~965-964~~ created in 2011. The sponsors express dismay that uptake in the use of the Small Irrigation registration has been less than anticipated at the time that it was created. The sponsors argue the changes in this bill will be good for both the registrant and the environment noting that “these projects have the potential to provide substantive environmental benefits for fisheries by facilitating diversions during periods of high stream flow and subsequently avoiding such diversions during periods of low stream flow.” The sponsors note that the expediting offered by this bill occurs after DFW has already had an opportunity to place conditions on the registration to protect instream uses of water.
- 4) **Related legislation.** AB 1420 (Aguiar-Curry) of 2017 was substantially similar to this bill. AB 1420 died 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 died in the Senate Appropriations Committee.

AB ~~965-964~~ (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**

Wine Institute (co-sponsor)  
California Association of Winegrape Growers (co-sponsor)  
California Trout  
The Nature Conservancy  
Trout Unlimited

### **Opposition**

None on file

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