

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1272 (Wood) – As Introduced February 16, 2023

SUBJECT: State Water Resources Control Board: drought planning

SUMMARY: Establishes a permanent drought program at the State Water Resources Control Board (State Water Board) and requires it to adopt principles and guidelines that apply to specified coastal watersheds during times of water shortage. Specifically, **this bill:**

- 1) Requires the State Water Board to develop a program in consultation with the Department of Fish and Wildlife (DFW), to adopt principles and guidelines for the diversion and use of water in coastal watersheds during times of water shortage. The purpose of the principles and guidelines shall be to enhance drought preparedness and climate resiliency and foster the development of watershed-level plans to protect public trust uses, public health and safety, and the human right to water.
- 2) Provides that the principles and guidelines shall apply to coastal watersheds that:
 - a) Drain to the Pacific Ocean;
 - b) Are located entirely within the North Coast (region one), San Francisco Bay (region two), or Central Coast (region three) water quality control board regions; and
 - c) Are priorities for native anadromous fish recovery.
- 3) The principles and guidelines shall not apply to:
 - a) Diversions with a low potential to affect fish survival or human health;
 - b) Diversion located on any mainstem river or stream that is downstream of a reservoir where releases are made to meet minimum instream flow requirements; and
 - c) Watersheds that drain into the San Francisco Bay at a location south of Pinole Point.
- 4) Allows the State Water Board to consult with other agencies including the Department of Water Resources (DWR), DFW, and the Wildlife Conservation Board to administer grants for improving water management infrastructure or enhancing aquatic habitat.
- 5) Provides that the State Water Board may use its existing regulatory authority to issue a cease and desist order or assess civil penalties for violations of the provisions of this bill.
- 6) Provides that an action of the State Water Board or DFW to implement this bill shall be subject to a categorical exemption from the California Environmental Quality Act so long as said action does not involve the relaxation of existing streamflow standards.
- 7) Makes findings and declarations regarding drought and extreme weather.

EXISTING LAW:

- 1) Establishes the State Water Board to oversee the water rights, water quality, and safe drinking water functions of state government and provides that it shall consist of five members appointed by the Governor and subject to confirmation by the State Senate (Water Code § 175).
- 2) Provides that the work of the State Water Board shall be divided into at least two divisions: the Division of Water Rights (WR Division) and the Division of Water Quality. Requires the State Water Board to appoint a deputy director for each division to supervise the work of the division and act as a technical advisor to the State Water Board (Water Code § 185).
- 3) Grants the State Water Board the authority to issue a cease and desist order to any person for specified violations and outlines the process the State Water Board must adhere to when issuing a cease and desist order (Water Code § 1831 and 1834).
- 4) Grants the State Water Board the authority to assess civil penalties for violations of water rights or regulations of the State Water Board. Specifies that the amount of the civil penalty shall not exceed \$500 per day that the violation occurs (Water Code § 1846).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** Drought preparedness and climate resiliency are critical for California's future as drought and extreme weather events becoming more frequent and severe. This bill requires the State Water Board and DFW to adopt principles and guidelines for the diversion and use of water in designated coastal watersheds during times of water shortage. The author asserts that the state must improve drought planning in response to climate change: "In 2021, California experience the driest year in over four decades. This is not a one-off event, it is a harbinger of our future with climate change. The state was caught flat-footed in responding to this catastrophically dry year. Responses came too late and were too small to prevent widespread hardship for people and ecosystems. This illustrated once again the major shortcomings of the current way the state's water management system deals with drought. We can't wait until drought conditions have already developed to formulate our responses, because by then it is already too late to respond effectively. The system is broken and needs foundational change."
- 2) **Background.** Until the series of atmospheric river-fed storms fell in January 2023, California was approaching a fourth year of drought with 2021 being the second driest year on record. That drought began less than five years after California experienced its worst drought on record from 2012 through 2016. Climate modeling indicates that droughts will become more severe and frequent going forward. In addition, research published in February 2022 indicates that Southwestern North America is currently experiencing the worst "megadrought" in the last 1200 years. This research estimates (based on climate models) that climate change accounts for 42 percent of this megadrought's severity and that the current megadrought would not be a 'megadrought' but for climate change (Williams, Cook, and Smerdon, 2022). The recent storms and flooding experienced in the beginning of 2023 have also called attention to the ways in which excess water is managed and may be diverted for other beneficial uses to better prepare for future drought.

Water Rights Drought Effort Review Report. A draft of this report which was prepared by the State Water Board was completed in February 2021 and consisted of interviews of more than 20 stakeholders. The goal was to gather input on the WR Division's actions during the 2012-16 drought and to solicit recommendations for actions the WR Division might take in a future drought. Participants in this effort included individuals, water agencies, irrigation districts, non-governmental organizations, and tribal governments. Recommendations varied given the diversity of participants in this effort, but generally fell into four categories: 1) communication; 2) legal and policy; 3) data; and 4) collaboration.

Specifically, some of which align with this bill, including:

- **Communication:** provide earlier and more frequent communication on water availability and watershed conditions; provide opportunity for input when protocols and analyses are developed;
- **Legal and policy:** establish clear drought protocols regarding voluntary or mandatory response actions far in advance of implementation; streamline review and approval of water transfers; integrate surface water and groundwater management; create incentives for permitting; set a goal to manage watersheds like adjudicated systems;
- **Data:** improve data systems to collect, manage, and share water right and reporting data will benefit watershed and drought management; develop methods available water on a watershed basis; and
- **Collaboration:** work with sister agencies, such as DFW, to begin planning an interagency drought protocol so that all agencies are better prepared for a future drought; include hydrologists and hydrogeologists who understand watersheds and developing water accounting and water balances.

California's Water Supply Strategy. In August 2022, Governor Newsom released his strategy (Adapting to a Hotter, Drier Future) to address a projected 10 percent decrease in water supply (6 million to 9 million acre-feet of water per year) by 2040 due to climate change. This report indicated the need for increased diversion infrastructure, preventing unauthorized diversion during dry conditions, and nimble diversion management supported by accurate and timely data, while minimizing harm to the environment.

Regulating principles and guidelines. "Principles and guidelines" is the term used in state plans and policy for water quality control (Water Code § 13142). State policy for water quality control shall consist of principles and guidelines for long range resource planning, other principles and guidelines deemed essential, and objectives for water resource development. Statutes requiring the North Coast instream Flow Policy (Water Code § 1259.4) and cannabis policy (Water Code § 13149) reference the State Water Board's adoption of principles and guidelines. "Requirements" within this Article generally refer to other actions like waste discharge requirements or allowing interim requirements pending the adoption of long-term principles and guidelines. Plans and policies within the Porter-Cologne Act (Division 7 of the Water Code), are not subject to the Administrative Procedure Act procedures for adopting regulations as specified (Government Code § 11353).

- 3) **Policy consideration.** While outside this Committee's jurisdiction, the State Water Board may need additional resources (staffing and contract funding) to conduct this new program.
- 4) **Arguments in support.** Several organizations write in support stressing the need to plan for drought and develop clear standards to guide water usage during drought, further adapt to a

changing climate, and to move away from “treat[ing] these extreme weather patterns as temporary or ‘emergency’ events”. These organizations assert that this bill will enable “local water users ... to develop local plans that anticipate how their business or communities will be impacted, therefore providing an incentive to invest in solutions that increase drought preparedness.”

- 5) **Related Legislation.** AB 2451 (Wood), 2021–22 Session, was similar to this bill and would have established a Drought Section at the State Water Board and required it to adopt principles and guidelines that apply to specified watersheds. AB 2451 died in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Trout
Environmental Defense Fund
Friends of Harbors, Beaches and Parks
Pacific Coast Federation of Fishermen's Associations
Planning and Conservation League
The Nature Conservancy
Trout Unlimited
Wholly H₂O

Opposition

None on file

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