

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1581 (Kalra) – As Amended April 7, 2023

SUBJECT: Diversion or obstruction of rivers, streams, or lakes: lake or streambed alteration agreement

SUMMARY: Exempts specified entities from the requirement to obtain a lake and streambed alteration agreement (LSAA) from the Department of Fish and Wildlife (DFW) for activities authorized pursuant to a specific take authorization provision under the California Endangered Species Act (CESA), but requires the same notification requirements and payment of fees as those already in place under the LSAA process. Specifically, **this bill:**

- 1) Exempts certain individuals, public agencies, universities, zoological gardens, and scientific or educational institutions authorized to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes from the requirement to obtain an LSAA with DFW, if the entity submits all of the following:
 - a) A written notification;
 - b) Fee; and
 - c) If applicable, a copy of proposed environmental protection measures authorized by other agencies' programmatic habitat restoration permits, as specified.
- 2) Requires DFW to notify the entity in writing whether the exemption applies within 60 days from the date that the notification is complete and the fee has been paid.
- 3) Imposes a state-mandated local program because a violation of these provisions would be a crime, but specifies that no reimbursement is required.

EXISTING LAW:

- 1) Prohibits a person, a state or local governmental agency, or a public utility from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless prescribed requirements are met, including written notification to DFW regarding the activity [Fish and Game Code (FGC) § 1600 *et seq.*]
- 2) Requires DFW to determine whether the activity may substantially adversely affect an existing fish and wildlife resource and, if so, to provide a draft LSAA to the entity within 60 days. Specifies that the entity has 30 days to contest or accept the draft LSAA. If contested, DFW must meet with the entity within 14 days of receiving the response to resolve the issues presented (FGC § 1603).

- 3) Exempts immediate emergency work necessary to protect life or property, immediate emergency repairs to public service facilities necessary to maintain a service as a result of a disaster in an area subject to gubernatorial emergency declaration, or emergency projects undertaken to maintain, repair, or restore an existing highway damaged as the result of natural disaster, from the need to obtain an LSAA (FGC § 1610).
- 4) Makes it unlawful for any entity to violate the above-mentioned provisions, and an entity that violates those provisions is also subject to a civil penalty of not more than \$25,000 for each violation (FGC § 1615).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill exempts voluntary habitat restoration activities authorized pursuant to a specific take authorization provision under CESA from having to obtain an LSAA. According to the author, “if California wishes to fulfill important environmental goals like 30x30, it must ‘cut the green tape’ and streamline its habitat restoration permitting processes. [...] [This bill] accomplishes this by allowing habitat restoration projects that have already acquired a ‘Restoration Management Permit’ (RMP) to proceed without acquiring a ‘Lake and Streambed Alteration Agreement’ (LSAA).”
- 2) **Background.** The LSAA program requires any person, state or local governmental agency, or public utility to notify DFW and receive approval prior to beginning any activity that may do one or more of the following:
 - Divert or obstruct the natural flow of any river, stream, or lake;
 - Change the bed, channel, or bank of any river, stream, or lake;
 - Use material from any river, stream, or lake; or
 - Deposit or dispose of material into any river, stream, or lake.

The “lake and streambed alteration” statute begins at FGC § 1600. It contains the provisions relating to LSAAs that, when issued, determine the extent to which a planned activity within a stream or river may adversely affect fish or wildlife or habitat and what off-setting mitigation may be required. In the absence of an LSAA, an entity may not substantially divert or obstruct the natural flow of a stream or deposit or dispose of material. Existing law requires the entity to notify DFW, which triggers the negotiation of the standards that may apply to the request. At that point, the entity and DFW enter into an LSAA that contains any necessary provisions to mitigate the planned activity’s potentially adverse consequences.

Before issuing an LSAA, DFW typically must comply with the California Environmental Quality Act (CEQA). However, some recent executive orders relating to drought and groundwater recharge (N-7-22, N-3-23, N-4-23) have exempted some projects from LSAAs or CEQA review of LSAAs. There is also a statutory CEQA exemption for restoration projects in effect until January 1, 2025, for fish and wildlife restoration projects that meet certain requirements.

The LSAA law was enacted first in 1970, reenacted in 1976, and amended in 2003, but the purpose of the law has never changed. The law declares “the protection and conservation of

the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state.”

Under historical practice, an LSAA could be required for an activity adversely affecting a river, stream, or lake, including those that are episodic and dry for periods of time. An LSAA may also apply to work undertaken within the floodplain of a body of water.

New exemption. There are currently LSAA exemptions for several emergency purposes and for activities authorized by a license for cannabis cultivation. The structure of this bill is similar to the cannabis exemption, in that entities are still required to provide notification to DFW and the payment of fees associated with an LSAA. Under this bill, the entity must also submit a copy of proposed environmental protection measures authorized by other agencies' programmatic habitat restoration permits and guidance.

This bill identifies several existing programmatic habitat restoration permits that are commonly used for restoration projects. These include, but are not limited to the following:

(i) State Water Resources Control Board Statewide Restoration General Order – Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide – Order No. WQ 2022-0048-DWQ (August 16, 2022).¹

(ii) The federal Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the National Oceanic and Atmospheric Administration Restoration Center and United States Army Corps of Engineers' Restoration Program for Northern California, Central Coastal California, South-Central and Southern California, and the Central Valley.²

(iii) The United States Fish and Wildlife Service's Programmatic Biological and Conference Opinion on the Statewide Programmatic Biological Assessment for Restoration: Multi-Agency Implementation of Aquatic, Riparian, Floodplain and Wetland Restoration Projects to Benefit Fish and Wildlife in California, FWS Reference: 2022-0005149-S7 (2022).³

This new exemption is intended for projects that receive an RMP from DFW. The RMP is not codified in statute, so this bill does not refer to it specifically. The RMP was developed under the Cutting the Green Tape process to address specific constraints restoration entities face when implementing restoration projects where protected species are present in project work areas. The RMP consolidates take authorizations that voluntary habitat restoration projects may need to obtain into a single streamlined permit. The RMP can authorize state-

¹ https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html#yr_2022

² Northern California: <https://repository.library.noaa.gov/view/noaa/41674>; Santa Rosa: <https://suscon.org/wp-content/uploads/2018/03/2016-Santa-Rosa-NOAA-RC-Corps-programmatic-BO.pdf>; Southern California: <https://suscon.org/wp-content/uploads/2017/05/2015-NOAA-RC-SoCal-SCentral-Programmatic-BO.pdf>; Central Valley: <https://suscon.org/wp-content/uploads/2018/09/2018-08-31-NOAA-Restoration-Centers-Central-Valley-BiOp.pdf>

³ <https://www.fws.gov/media/2022083120220005149-s7-statewide-restoration-final-pbo-appendices>

defined take (hunt, pursue, capture, catch, or kill, or attempt to do so) of endangered, threatened, and candidate species pursuant to CESA as well as fully protected species pursuant to FGC §§ 3511, 4700, 5050, and 5515. The RMP's CESA and fully protected species take authorizations do not require submittal of an application fee.

Cutting the Green Tape. The Newsom Administration has identified “Cutting the Green Tape” as a priority initiative to increase the pace and scale of ecological restoration, conservation, climate adaptation, and stewardship. Within the California Natural Resources Agency (CNRA), the effort is focused on improving regulatory processes and policies so that ecological restoration and stewardship can occur more quickly, simply, and cost-effectively. Cutting the Green Tape also supports and complements CNRA’s “30 by 30” initiative, a commitment to achieving the goal of conserving 30% of California’s lands and coastal waters by 2030.

During Fiscal Year 2021-2022, DFW funded, permitted, or assisted with environmental review exemptions for over 146 projects, 134,515 acres, and 103 stream miles saving an estimated \$1,552,600 dollars with an average processing time of 70 days. The 146 restoration projects were spread across six categories of project or permitting types as follows: RMPs, restoration consistency determinations, Habitat Restoration and Enhancement Act projects, LSAAs, statutory exempt restoration projects, and restoration grants. More details can be found in DFW’s report to the Legislature.⁴

- 3) **Policy considerations.** LSAAs apply to all fish and wildlife species, not just fully protected species or those listed under CESA. The RMP does not currently incorporate take coverage for common species and species of special concern, but DFW is actively pursuing options to incorporate this take authority into the RMP. This bill assumes that avoidance and mitigation provisions in programmatic habitat restoration permits - which are often specific to the listed species covered by the permit - are adequate to prevent or mitigate impacts to other fish and wildlife species. While the outcomes of voluntary habitat restoration projects should benefit multiple species, the activities associated with the implementation of habitat restoration projects can have impacts that LSAAs are intended to prevent and mitigate. This concern is partially ameliorated by the continued requirement of notification to DFW of applicable projects, and the affirmative decision by DFW that the exemption under this bill applies to the project.

Under this bill, DFW has 60 days to notify the entity in writing whether the exemption applies. If the exemption does not apply, the entity will potentially have lost up to 60 days wherein the existing LSAA process was not occurring. Theoretically, there may be time savings if an LSAA is needed because the entity has already submitted the required LSAA notification and fee, but that is not guaranteed. The author may wish to consider clarifying this bill by specifying whether the existing statutory timelines apply or adding new statutory deadlines for the approval of an LSAA if the exemption is found to not apply.

- 4) **Arguments in support.** Sustainable Conservation writes in support, stating that this bill will enable DFW to “more quickly and efficiently evaluate the potential environmental impacts of

⁴ Department of Fish and Wildlife. (October 2022). Cutting the Green Tape Report to the Legislature, FY 21-22. Accessed April 10, 2023 at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=211177&inline>

restoration projects, while preserving necessary state oversight.” Trout Unlimited also writes in support, stating that this bill “would accelerate the approval process for eligible restoration projects by eliminating permitting redundancies between the RMP and LSAA programs, thereby saving both time and scarce restoration dollars without sacrificing environmental protection.”

- 5) **Related legislation.** AB 830 (Soria) of the current legislative session exempts the temporary operation of existing infrastructure or temporary pumps being used to divert flood stage and monitor stage flows to beneficial groundwater recharge necessary to protect downstream life and property from the requirements of the LSAA process. AB 830 is set for a hearing in the Assembly Water, Parks, and Wildlife Committee.

AB 1024 (Aguiar-Curry) of the current legislative session exempts entities that hold a registration for small domestic, small irrigation, or livestock stockpond water use from the requirement to enter into an LSAA. AB 1024 is set for a hearing in the Assembly Water, Parks, and Wildlife Committee.

SB 716 (McGuire), Chapter 735, Statutes of 2021, extends the Habitat Restoration and Enhancement Act (HREA) sunset date from January 1, 2022, to January 1, 2027, among other provisions.

AB 2193 (Gordon), Chapter 604, Statutes of 2014, establishes the HREA, a permitting process with DFW for landowners, state and local governments, and conservation organizations seeking to implement small-scale, voluntary habitat restoration projects. Restoration and enhancement projects approved under HREA by DFW do not require additional permits from DFW, such as an LSAA or a CESA take permit.

REGISTERED SUPPORT / OPPOSITION:

Support

Sustainable Conservation (Sponsor)
Trout Unlimited

Opposition

None on file

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