

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE  
Rebecca Bauer-Kahan, Chair  
AB 345 (Wilson) – As Amended March 20, 2023

**SUBJECT:** Habitat restoration: flood control: advance payments

**SUMMARY:** Authorizes the Department of Water Resources (DWR) and the Central Valley Flood Protection Board (CVFPB) to provide advance payments to local agencies for projects that restore habitat for threatened and endangered species under state or federal law or improve flood protection. Specifically, **this bill:**

- 1) Authorizes DWR and CVFPB to provide advance payments to local agencies for projects that have at least one of the following project purposes: restoring habitat for threatened and endangered species under state or federal law or improving flood protection.
- 2) Specifies that the amount of funds advanced to the local agency at any one time shall not exceed 25 percent of the entire amount authorized to be provided under the funding agreement with the local agency.
- 3) Allows DWR or CVFPB to reduce or eliminate any retention that would otherwise be withheld under the funding agreement.
- 4) Authorizes a local agency to deposit advanced payments in its treasury and requires the local agency to apply any interest earned to the project for which funds were advanced.
- 5) Requires the advanced funds to be handled as follows:
  - a) The funds shall be spent within six months of the date of receipt, unless DWR or CVFPB waives this requirement; and
  - b) The recipient shall, on a quarterly basis, provide an accountability report to DWR or CVFPB regarding the expenditure and use of any advanced grant funds that provides specified information.
- 6) Requires that if funds are not expended, the unused portion of the grant be returned to DWR or CVFPB within 60 days after project completion or the end of the grant performance period, whichever is earlier.
- 7) Authorizes DWR or CVFPB to adopt additional requirements for the recipient regarding the use of the advanced payment to ensure that the funds are used properly.
- 8) Defines “advance payments” as funds that are provided to a local agency before the local agency has incurred expenses in furtherance of a project to restore habitat for threatened and endangered species under state or federal law or improve flood protection and that are provided by DWR or CVFPB to allow the local agency to fund the project on a cashflow basis.

**EXISTING LAW:**

- 1) Requires DWR, within 60 days of receiving specified project information relating to grants for projects included and implemented in an integrated regional water management plan (IRWMP), to provide advanced payment of 50 percent of the grant award for projects where the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community, that satisfy specified criteria, including that the grant award for the project is less than \$1,000,000. Requires the project proponent to handle the advanced funds as prescribed, and sunsets the advanced payment provisions as of January 1, 2025 [Water Code (WC) § 10551, § 10552].
- 2) Authorizes specified state departments and authorities, including the California Natural Resources Agency and all boards and departments contained in that agency, to advance funds to a community-based private nonprofit agency with which it has contracted for the delivery of services upon making a determination that an advance payment is essential for the effective implementation of a program. The amount of funds advanced may not exceed 25 percent of the annual allocation to be made to the agency during the fiscal year. Requires the departments and authorities to develop a plan to establish control procedures for advance payments (Government Code § 11019).

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

**COMMENTS:**

- 1) **Purpose of this bill.** This bill seeks to increase the delivery of flood and multi-benefit projects implemented by local agencies using state funding by providing the ability for DWR and CVFPB to advance grant payments. According to the author, “[...] California remains vulnerable to floods that risk life and property. While our State continues to make progress in flood protection, with the help of local agencies, there remains much work to be done. Similarly, local agencies are helping to restore habitat to protect and restore many species, including threatened and endangered species, often with State funding. However, much work remains to implement multi-benefit projects that can both protect our communities from flooding while also improving the environment. Our smaller and local agencies need advanced payment discretion provided to DWR by [this bill] to ensure that their work can be accomplished.”
- 2) **Background.** Reimbursement follows expenditure for most grants supported with state funding. However, for many grant recipients, it can be a financial hardship to bear the costs of a project until reimbursement. Some of the local agencies that develop flood or multi-benefit projects are small and have limited funds. These agencies may have annual budgets that are dwarfed by the magnitude of the capital projects that they implement. In addition, Proposition 218 (see California Constitution Article XIII C and Article XIII D) requires that the funds collected by local agencies can only be used for specific purposes and those funds may not be eligible, or sufficient, to cover the entire cost of capital projects. This can result in cash flow challenges for the local agency.

CVFPB is the state regulatory agency responsible for ensuring that appropriate standards are met for the construction, maintenance, and protection of the flood control system that protects life, property, and wildlife habitat in the Central Valley from the devastating effects of flooding. CVFPB issues encroachment permits and works closely with DWR and other agencies to improve flood protection structures.

*Funding programs.* This bill provides broad permissive authority to DWR and CVFPB to advance up to 25 percent of a funded project at a time for projects that restore habitat for threatened and endangered species under state or federal law or improve flood protection. DWR has many grant programs to which the new authority in this bill might apply. Eligible programs might include the Delta Levees Special Flood Control Projects, the Flood Corridor Program, the Urban Streams Restoration Program, the Coastal Watershed Flood Risk Reduction Program, the Urban Flood Risk Reduction Program, the Small Community Flood Risk Reduction Program, and the Flood Control Subventions Program, among others (see <https://water.ca.gov/Work-With-Us/Grants-And-Loans> for more information).

*Example of current use of advanced payments.* DWR provides advance payments of IRWMP grants for projects that meet specified criteria. The IRWMP advance payment mechanism [SB 208 (Lara), Chapter 675, Statutes of 2015] was established to eliminate reimbursement delays following the project proponent incurring expenses. For IRWMP grants, advanced payment of the first 50 percent or \$500,000, whichever is less, of the grant award is provided for projects that satisfy specified criteria, including that the proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community, and that the grant award is less than \$1,000,000.

*Risks and reporting requirements.* If fraud occurs with advanced funds, enforcement actions may be required. IRWMP advance funding recipients are required to provide a quarterly accountability report to DWR regarding the expenditure and use of any advanced grant funds. This bill proposes similar reporting requirements for grants receiving advance payments in order to limit the possibility of fraud.

- 3) **Arguments in support.** Numerous local agencies write in support, stating that advancing funds will eliminate a major obstacle to financing the development and delivery of these important projects, and should in turn accelerate the pace of flood risk reduction and habitat restoration.
- 4) **Related legislation.** AB 2060 (Eduardo Garcia), 2017-18 Session, would have created an advanced payment mechanism for the State Water Pollution Control Revolving Fund Small Community Grant and specified drinking water grant programs funded by Proposition 1 administered by the State Water Resources Control Board. AB 2060 was vetoed by Governor Brown.

AB 2064 (Gloria), 2017-18 Session, would have required DWR to provide advance funding of any remaining grant funds under IRWMP to project proponents that have received a prior advanced payment, satisfied all quarterly reporting requirements, and submitted a first one-half project accountability report to the DWR. AB 2064 was vetoed by Governor Brown.

SB 208 (Lara), Chapter 675, Statutes of 2015, requires DWR to provide advance funding of IRWMP grants less than \$1,000,000 when the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Little Egbert Joint Powers Agency (Sponsor)  
California Central Valley Flood Control Association  
California State Association of Counties (CSAC)  
Knights Landing Ridge Drainage District  
Monterey County Board of Supervisors  
Northern California Water Association  
Reclamation District 3  
Reclamation District 17  
Reclamation District 108  
Reclamation District 349  
Reclamation District 999  
Reclamation District 2033  
Reclamation District 2037  
Reclamation District 2068  
Reclamation District 2084  
Reclamation District 2140  
Sacramento River West Side Levee District  
San Joaquin Area Flood Control Agency  
Solano County Board of Supervisors  
Sutter Butte Flood Control Agency  
The Nature Conservancy  
Three Rivers Levee Improvement Authority  
Yuba Water Agency

**Opposition**

None on file

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