

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE
Rebecca Bauer-Kahan, Chair
AB 66 (Mathis) – As Amended March 9, 2023

SUBJECT: Natural Resources Agency: water storage projects: permit approval

SUMMARY: Requires departments within the Natural Resources Agency (Resources Agency) to approve permits for publicly-funded water storage projects and projects funded by the Water Quality, Supply, and Infrastructure Project Act (Proposition 1) within 180 days if the projects have a project labor agreement or use a skilled and trained workforce. Specifically, **this bill:**

- 1) Requires each department, board, conservancy, and commission within the Resources Agency to approve permits for projects funded by Proposition 1 and other water storage projects funded by public funds within 180 days of receiving the application.
- 2) Provides that if the respective permitting agency does not approve a permit for a specified project within 180 days, the permit shall be deemed approved.
- 3) Provides that this bill shall only apply if either of the following conditions are met:
 - a) All construction work on the project is governed by a project labor agreement; or
 - b) All contractors and subcontractors working on the project use a skilled and trained workforce to perform work within an apprenticeable occupation in the building and construction trades.
- 4) Defines “project labor agreement” and “skilled and trained workforce” for purposes of this bill.
- 5) Provides that to the extent this bill is inconsistent or in conflict with any provision of law, this bill shall prevail.

EXISTING LAW:

- 1) Establishes the Resources Agency that consists of various departments, conservancies, boards, and commissions (Government Code § 12805).
- 2) Establishes the Department of Fish and Wildlife (DFW) in the Resources Agency with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species [Fish and Game Code (FGC) § 700; § 1802].
- 3) Prohibits any act which could directly or indirectly take threatened or endangered species listed under the California Endangered Species Act (CESA) (FGC § 2080).
- 4) Permits the take of an endangered or threatened species if it is incidental to an otherwise lawful activity (FGC § 2081).

- 5) Prohibits any entity from diverting or obstructing the natural flow of, or using any material from, the bed, channel, or bank of any river, stream, or lake unless DFW determines the activity will not substantially 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)] (FGC § 1602).
- 6) Enacts the California Coastal Act to protect and maintain the coastal zone and its natural and artificial resources, to balance conservation of the coastal zone with the social and economic needs of the people, and maximize public access to the coast [Public Resources Code (PRC) § 30001.5). Establishes the California Coastal Commission to implement the California Coastal Act (PRC § 30300).
- 7) Establishes the Central Valley Flood Protection Board (CV Flood Board) within state government and provides for coordination between Department of Water Resources (DWR) and CV Flood Board in planning, managing, and maintaining the flood control infrastructure known as the State Plan of Flood Control (Water Code §§ 8520 *et seq.* and 8685 *et seq.*).
- 8) Enacts Proposition 1 to authorize the issuance of \$7.55 billion in general obligation bonds for water storage, environmental protection and restoration, drought response, groundwater management, water recycling, and flood protection (Water Code § 79700 *et seq.*).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** The author asserts that critically needed water infrastructure projects that have been awarded funding by Proposition 1 have been unnecessarily delayed because the permits for these projects have not been approved.
- 2) **Background.** The Resources Agency has a broad mission to protect and manage natural resources in California. Several departments, boards, conservancies, and commissions fall under the Resources Agency and help achieve this mission. These include:
 - Six departments: Department of Forestry and Fire Protection (CAL FIRE), Department of Conservation, DFW, Department of Parks and Recreation, DWR, and California Conservation Corps.
 - 10 conservancies: Baldwin Hills Conservancy, California Tahoe Conservancy, Coachella Valley Mountains Conservancy, Sacramento-San Joaquin Delta Conservancy, San Diego River Conservancy, San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, San Joaquin River Conservancy, Santa Monica Mountains Conservancy, Sierra Nevada Conservancy, and State Coastal Conservancy.
 - 20 boards and commissions, including: Board of Forestry, California Boating and Waterways Commission, California Coastal Commission, California Energy Commission, California Fish and Game Commission, California State Lands Commission, California Water Commission, CV Flood Board, Delta Protection Commission, Mining and Geology Board, Parks and Recreation Commission, and Wildlife Conservation Board.

Entities within the Resources Agency issue a wide range of permits. While not an exhaustive list, the following would be some of the permits most commonly implicated by this bill:

- *LSAAs* issued by DFW. These permits 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 widely, largely due to whether or not the applicant submits a complete notification to start the process.
- *ITPs* issued by DFW. These permits allow a permittee to take a CESA-listed species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. These permits are most commonly issued for construction, utility, transportation, and other infrastructure-related projects and, in some cases, restoration projects. DFW indicates that the timeline for finalizing an ITP varies widely and notes that a final ITP cannot be issued until the applicant has completed the environmental review under the California Environmental Quality Act (CEQA).
- *Encroachment Permits* issued by the CV Flood Board. An encroachment permit is required for “every proposal or plan of work” that is located between or in the vicinity of any Federal Project Levees within the State Plan of Flood Control or a designated floodway. Activities requiring this permit include placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, structure, or obstruction as well as the planting, excavation, or removal of vegetation. The Flood Board indicates that it typically takes between 180 to 240 days to finalize an encroachment permit if the application is complete when submitted. In addition, CEQA must be completed before the Flood Board can issue an encroachment permit.
- *Coastal Development Permits* issued by the Coastal Commission. These permits are the regulatory mechanism by which proposed developments in the coastal zone are brought into compliance with the Coastal Act. “Development” is defined broadly under the Coastal Act, but would include any water infrastructure within the Coastal Zone. The extent of the Coastal Zone varies but can extend up to five miles inland from the shore.

Proposition 1. Voters approved this measure, a \$7.55 billion general obligation bond for various water and environmental restoration projects, in November 2014. The funding in Proposition 1 is allocated as follows: \$2.7 billion for public benefits of water storage projects (WSIP); \$1.5 billion for protecting and restoring lakes, rivers, streams, and watersheds; \$900 million for groundwater sustainability; \$810 million for drought preparedness; \$725 million for water recycling; \$520 million for safe drinking water; and \$395 million for flood management. According to the bond accountability web site (www.bondaccountability.resources.ca.gov), more than \$7.5 billion of these funds have been committed or awarded to projects; however, this does not mean all of the funds have been spent, as many bond-funded programs work on a reimbursement basis so that the administering agency reimburses a grant recipient after the work is actually completed. As such, this bill would apply not only to the yet unspent water storage funding under Proposition 1, but likely to many other yet-to-be completed projects that have received grant awards.

- 3) **Suggested committee amendments.** As discussed above, the permits covered by this bill can take several months to be finalized; however, it is not clear the extent to which these

permits are responsible for delay in the implementation of projects funded by Proposition 1 and other publicly funded water storage projects and the Committee has not been provided with any information to illuminate this question. Delay in projects, particularly large infrastructure projects, can be due to a variety of factors including planning and design, environmental review, land acquisition, financing, agreements between project partners and project beneficiaries, and litigation, along with permitting. Further, the automatic approval mechanism in this bill risks adverse impacts to the environment and could jeopardize public safety. Finally, it is unclear whether the submittal of an incomplete permit application (oftentimes a significant factor in delaying permit approval) would start the 180-day timeline proposed by this bill. *Given this, the Committee may wish to consider requesting that the author strike the automatic permit approval provisions of this bill and, instead, add provisions to bring greater transparency to the permit approval process, as follows:*

Amendment 1

On page 2, line 5, after “shall” insert: “take all reasonable steps to”

Amendment 2

On page 2, line 9, strike “the” and insert: “a complete”

Amendment 3

On page 2, strike lines 11 and 12.

Amendment 4

On page 2, after “(d)” insert:

“The department, board, conservancy, or commission responsible for issuing a permit pursuant to this section shall post updates on its internet website showing how the permit approval process is progressing and the estimated time until the permit shall be approved.
(e)”

- 4) **Arguments in support.** The State Building and Construction Trades Council of California (Building Trades) supports this bill arguing that a number of permits for projects funded by Proposition 1 have yet to be approved and that this has resulted in unnecessary delays in the construction of critical infrastructure. The Building Trades assert that this bill can help get these “projects up and running, creating hundreds of construction jobs, many in parts of the state where good-paying jobs are in short supply, and help to fix the problems with the state’s water infrastructure.”
- 5) **Arguments in opposition.** The Natural Resources Defense Council (NRDC) and a handful of environmental and environmental justice organizations oppose this bill arguing that it will “override California law, including bedrock environmental laws and laws regarding dam safety.” NRDC et al. assert that this bill will lead to environmentally destructive, and potentially unsafe, dams being constructed. These groups maintain that robust permitting for water storage projects is needed to “ensure projects are properly designed and do not fail during floods and threaten downstream lives and communities, do not divert water that belongs to other water right holders, and protect fish and wildlife.”

The Western Electrical Contractors Association and the Plumbing-Heating-Cooling Association of California (Contractors Associations) concede that measures to expedite water projects may have merit but oppose this bill due to the inclusion of its requirement that a project must have a project labor agreement (PLA) in order to qualify for the streamlining provided by this bill. The Contractors Associations argue that the PLA provision in this bill “is discriminatory and increases the cost of construction.”

- 6) **Related legislation.** AB 62 (Mathis), current session, sets a goal to increase total water storage by 3.7 million acre-feet (AF) by 2030 and 4 million AF by 2040 and directs the State Water Resources Control Board to consult with DWR to design and implement measures to attain this goal. AB 62 is currently pending before this Committee.

AB 422 (Alanis), current session, requires the Resources Agency to post information regarding progress made towards increasing water storage on its internet website. AB 422 is currently pending before this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

State Building and Construction Trades Council of California

Opposition

California Coastkeeper Alliance

Clean Water Action

Community Water Center

Defenders of Wildlife

Natural Resources Defense Council

Plumbing-Heating-Cooling Contractors Association of California

Western Electrical Contractors Association

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