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California State Assembly

WATER, PARKS, AND WILDLIFE



REBECCA BAUER-KAHAN
CHAIR

Chief Consultant
Pablo Garza

Senior Consultant
Keith Cialino

Committee Secretary
Wendy Burke

1020 N Street, Suite 160
(916) 319-2096
FAX: (916) 319-2196

AGENDA

Tuesday, March 22, 2022
9 a.m. -- State Capitol, Room 444

- | | | | |
|----|---------|---------------|---|
| 1. | AB 1645 | Petrie-Norris | State parks: concession contracts: Crystal Cove State Park.(Urgency) |
| 2. | AB 1906 | Stone | Voluntary stream restoration: property owner liability: indemnification: claims.(Urgency) |
| 3. | AB 2128 | Cooley | State parks: California Admission Day: discounted admission. |
| 4. | SB 463 | Dahle | Water: landowner or water right holder right to modify, repair, or replace jointly used conduits. |

INFORMATIONAL HEARING

(Immediately following Bill Hearing)

SUBJECT: California's 30x30 Initiative

We encourage the public to provide written testimony before the hearing by visiting the committee website at <https://awpw.assembly.ca.gov/>. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted. All are encouraged to watch the hearing from its live stream on the Assembly's website at <https://www.assembly.ca.gov/todaysevents>.

The hearing room will be open for attendance of this hearing. Any member of the public attending a hearing is encouraged to wear a mask at all times while in the building. The public may also participate in this hearing by telephone. We encourage the public to monitor the committee's website for updates.

Date of Hearing: March 22, 2022

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1645 (Petrie-Norris) – As Amended February 14, 2022

SUBJECT: State parks: concession contracts: Crystal Cove State Park

SUMMARY: Authorizes the Department of Parks and Recreation (State Parks) to enter into a new concession agreement for Crystal Cove State Park that may be awarded for up to 55 years. Specifically, **this bill:**

- 1) Authorizes State Parks to replace the existing concession agreement with a new concession agreement for up to 55 years in length.
- 2) Permits the new concession agreement to be awarded to the current concessionaire, the Crystal Cove Management Company (CCMC).
- 3) Specifies that the new concession agreement is in connection with federal historic tax credits for the construction, development, and operation of multiple-unit lodging facilities at Crystal Cove State Park.
- 4) Declares that the bill is to take effect immediately as an urgency statute.

EXISTING LAW:

- 1) Authorizes State Parks to enter into contracts with natural persons, corporations, partnerships, and associations for the construction, maintenance, and operation of concessions within units of the state park system [Public Resources Code (PRC) § 5010.1].
- 2) Requires concession contracts to contain certain specified provisions, including a provision that the maximum term shall be 10, 20, or 50 years depending on certain conditions (PRC § 5080.18).
- 3) Sets the maximum term at 50 years if the concession contract is for the construction, development, and operation of multiple-unit lodging facilities, as specified (PRC § 5080.18).
- 4) Requires, with some exceptions, that all contracts authorizing occupancy of any portion of the state park system for a period of more than three years be awarded to the best responsible bidder (PRC § 5080.05).
- 5) Authorizes the Director of State Parks to award a concession contract authorizing occupancy of any portion of the state park system for a period of more than three years to the best responsible person or entity submitting a proposal, as defined, for a concession contract if the director determines that it is in the best interest of the state, subject to certain requirements and procedures (PRC § 5080.23).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:1) **Purpose of the bill.** According to the author:

“The Crystal Cove State Park is one of the most beloved beaches and state parks in Orange County. Nestled in this park is the Crystal Cove Historic District which contains 46 vintage cottages built in the 1930s and 40s. These coastal accommodations support the maintenance of the Historic District, special projects in the park, K-12 STEM education programs, and coastal conservation work.

With most of the cottages already restored, only 17 cottages remain left to be renovated. These renovations would double the number of lower-cost overnight rental units, install modern utilities, stabilize bluffs, and add a 650-foot-long boardwalk. To keep the Crystal Cove cottages protected and accessible to all Californians, the park would need every dollar.

The Crystal Cove cottages can access approximately \$6 - 7 million in funding if it were approved for federal historic tax credits (HTC). Due to IRS regulations however, CCMC’s concessionaire agreement with the Department of Parks and Recreation is not long enough to qualify for tax credits. Thus, the legislature needs to extend its concessionaire agreement by 55 years to 2077. If AB 1645 is passed, the cottages can receive money to fund its renovations and allow thousands of people to enjoy one of the most beautiful areas in Orange County for generations to come.”

2) **Background: *Crystal Cove State Park.*** Crystal Cove State Park is located off Pacific Coast Highway between Corona del Mar and Laguna Beach in Orange County. The park features 3.2 miles of beach, 2,400 acres of backcountry wilderness, and an offshore underwater area. The federally listed Crystal Cove Historic District is a 12.3-acre coastal portion of the 2,791-acre Crystal Cove State Park, and includes an enclave of 46 rustic coastal cottages originally built as a seaside colony in the 1930’s and 40’s near the mouth of Los Trancos Creek.

The park is currently operated by a concessionaire, the CCMC, which is an 100 percent owned and controlled subsidiary of the Crystal Cove Conservancy, a 501(c)(3) nonprofit entity. The CCMC signed a 50 year concession contract with State Parks in 2006 that allows them to manage the cottages, foodservice operations, and shuttles in the park unit. The contract expires in 2056.

Cottage Restoration. Twenty-eight of the cottages and a historic Japanese language schoolhouse have been restored. Located right on the beach or overlooking it from a bluff top, 11 individual or 3 dorm-style cottages serve as affordable coastal accommodations and are available to reserve through the Reserve California website.

The 17 remaining cottages on the North Beach at Crystal Cove State Park will add 22 additional overnight rental units once they are restored, doubling the currently available occupancy. One of the last 17 cottages, which is designed to operate as a hostel-style dorm, will host overnight coastal engineering programs for underserved high school students from around Southern California in partnership with the University of California Irvine. In November 2020, the infrastructure phase of the project was completed, which saw the installation and modernization of existing utilities, stabilization of the bluffs, and the installation of a 650-foot boardwalk providing access to the cottages and Americans with

Disabilities Act (ADA) compliant public access to the beach.

The total cost of the remaining cottage renovations is estimated at \$33 million. The Legislature provided \$2.9 million in the 2019-20 budget expressly for the cottage renovations. An additional \$21 million was made available as part of State Parks' appropriation for deferred maintenance in the 2021-22 budget. The Coastal Conservancy has also provided grants totaling \$5.5 million to date. Revenue from CCMC operations (\$800,000) and donations (\$700,000) are also available for the renovations.

Tax Credit. In order to generate additional funding for the remaining cottage restorations and renovations, the CCMC would like to use Federal Historic Tax Credits (HTC). The HTC program is a partnership between the National Park Service (NPS), the State Historic Preservation Office (SHPO), and the Internal Revenue Service (IRS). The HTC is the nation's largest federal incentive promoting urban and rural revitalization through private investment in reusing historic buildings. The credit allows the owner or project sponsor of a certified historic structure to receive a federal income tax credit equal to 20 percent of the amount spent on qualified rehabilitation costs.

The process to apply for HTCs involves the review and approval of several government agencies before the tax credits can be obtained. The project sponsor (in this case CCMC) would submit a detailed application to SHPO that describes the historical nature of the project. If SHPO approves the application, it is then forwarded to the NPS for approval. With NPS approval, the project sponsor is eligible for the tax credits. If approved, CCMC is estimating the credits will be worth \$6 to \$7 million, which will be invested back into the project.

HTC ownership requirement. The project sponsor must be a taxable entity and "own" the subject property for tax purposes. Tax ownership of a property can be achieved two ways: 1) fee simple title, or 2) via a long-term lease that is substantially in excess of the useful life of the property. The useful life of property is essentially the depreciable life, which for commercial buildings like Crystal Cove is 39 years. Therefore, CCMC must control the property after the planned renovation is complete for "substantially in excess" of 39 years.

The Federal government has acknowledged in various formats that long-term control (without fee simple ownership) can constitute the requisite tax ownership to take advantage of Federal historic tax credits but has not weighed in as to exactly how long the length of an agreement must be. Most tax practitioners believe that for commercial property 50 to 55 years is a sufficient length of lease to provide control for substantially in excess of the useful life of the buildings. In CCMC's case, its concession contract only has 34 years remaining. Under existing statute, State Parks can only enter into concession contracts of up to 50 years, which still might not satisfy the ownership requirement.

The CCMC project is being completed in phases. The countdown for CCMC having sufficient control over the property does not begin until the final phase is completed. CCMC estimates the project could take up to 4 years. This is the reason a 55-year concession term is proposed in this bill.

Entering into the new concession contract envisioned by this bill will still allow State Parks to rebid the concession rights to this property at the end of the concession agreement. State

Parks could also put the new 55 year concession agreement to bid. It is unclear if existing exemptions in statute related to the bid process would allow the Director of State Parks to renegotiate the existing concession contract without bidding out the concession.

- 3) **Arguments in Support.** Those in support argue that this bill would allow the Crystal Cove Management Company to receive HTCs to help fund the remaining cottage renovations. The supporters of this bill maintain that not extending the concession contract by 55 years will jeopardize CCMC's ability to use tax credits to help finance the project.
- 4) **Related Legislation**
AB 74 (Ting), Chapter 23, Statutes of 2019, among other provisions, appropriated \$2.9 million for cottage restoration in Crystal Cove State Park.

SB 1473 (Committee on Natural Resources and Water), Chapter 546, Statutes of 2016, authorized State Parks to award a concession agreement at Will Rogers State Beach for up to 50 years in length upon approval of the Director of State Parks, and if the director determines that a longer term is necessary to allow the concessionaire to amortize improvements made by the concessionaire that are anticipated to exceed \$1.5 million in capital improvements.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Newport Beach
Crystal Cove Conservancy
Laguna Ocean Foundation
Orange County Coastkeeper
Pacific Marine Mammal Center

Opposition

None on file

Analysis Prepared by: Keith Cialino / W., P., & W. / (916) 319-2096

Date of Hearing: March 22, 2022

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1906 (Stone) – As Introduced February 9, 2022

SUBJECT: Voluntary stream restoration: property owner liability: indemnification: claims

SUMMARY: Makes technical changes to provisions relating to indemnity and limited liability protections for real property owners who voluntarily permit a state-funded project to restore fish and wildlife habitat on their real property. Specifically, **this bill:**

- 1) Deletes the requirement that a real property owner must submit a claim for any costs related to civil liability to the Department of General Services (DGS) pursuant to Section 905.2 of the Government Code.
- 2) Authorizes DGS to adopt any regulations necessary to establish a process for paying claims arising from the costs of any civil liability incurred relating to indemnity and limited liability protections for real property owners.
- 3) Declares that the bill is to take effect immediately as an urgency statute.

EXISTING LAW:

- 1) Requires a qualifying state agency, as defined, that funds a project to restore fish and wildlife habitats to indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for the project from civil liability for property damage or personal injury resulting from the project if the project is approved under Lake and Streambed Alteration Agreements [Fish and Game Code (FGC) § 1600 et seq.], the Habitat Restoration and Enhancement Act (FGC § 1652), or through the State Water Resources Control Board Section 401 General Water Quality Certification for Small Habitat Restoration Projects (FGC § 1653); meets other specified requirements; and qualifies for a California Environmental Quality Act (CEQA) exemption as a small habitat restoration project (FGC § 1660).
- 2) Authorizes a qualifying state agency to indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for a specified project from civil liability for property damage or personal injury resulting from the project in the case the project does not meet the specified CEQA exemption (FGC § 1660).
- 3) Requires the costs of any civil liability incurred by a qualifying state agency to be promptly paid from the General Fund, and requires those costs to be submitted as a claim by the real property owner to DGS pursuant to specified provisions (FGC § 1660).
- 4) Defines a "qualifying state agency" as the Natural Resources Agency and the California Environmental Protection Agency, as well as all boards, commissions, conservancies, and departments within the jurisdiction of those agencies (FGC § 1660).
- 5) Outlines, under the Government Claims Act, the general procedure for claims and actions against public entities and public employees, and requires DGS to carry out various duties relating to processing certain types of claims against the state. (Government Code § 905.2)

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

1) **Purpose of the bill.** According to the author:

“In 2021, AB 315 (Stone) was enacted to encourage landowners to voluntarily permit government-funded habitat and streambed restoration work to take place on their property by providing landowners limited liability protection for any harm that may occur due to the design, construction, or planned operation of a restoration project. This bill, AB 1906, is a technical clean-up to that measure designed to clarify the process for filing legal claims with the Department of General Services.”

This bill deletes a cross-reference contained in AB 315 regarding the state’s claims process. The Government Code section in question, regarding the processing of claims against the state by DGS, applies to claims with known costs. However, the claims envisioned by AB 315 require the state to defend a property owner in court and costs are unknown when a claim is initially made.

This bill provides DGS the authority and flexibility to adopt any regulations necessary to process claims arising from the indemnity provisions of AB 315. Finally, recognizing that the flaw in the existing claims process may be delaying critical habitat restoration work across the state, this bill adopts an urgency clause to remedy the noted issue as quickly as possible.

2) **Background.** Approximately 50 percent of California is privately owned. As a result, property owners play a significant role in maintaining healthy, functioning ecosystems. Many property owners would like to protect and restore habitats on their properties, but they face a number of challenges, including a fear of being held personally liable for any issues related to the project.

Supporters of AB 315 stated that no property owner has ever been held liable merely for granting access for restoration to occur on their property. However, AB 315 provides protections to those property owners to definitively rule out the possibility of damages against such a property owner.

3) **Policy Considerations.** If this bill moves forward, the author may want to clarify that the authorization for DGS to adopt regulations to establish a process for paying claims includes any regulations necessary to accept and process claims.

4) **Dual-referral.** This bill is double-referred to the Assembly Judiciary Committee for consideration of issues within its jurisdiction.

5) **Arguments in Support.** Those in support argue that the technical changes proposed by this bill are needed to ensure the protections of AB 315 can be effectively utilized.

6) **Related Legislation**

AB 315 (Stone), Chapter 580, Statutes of 2021, requires a qualifying state agency, as defined, that funds a project to restore fish and wildlife habitats to indemnify and hold

harmless a real property owner who voluntarily allows their real property to be used for the project from civil liability for property damage or personal injury resulting from the project if specified requirements are met.

SB 448 (Pavley), Chapter 184, Statutes of 2009, authorized the DFW to enter into a safe harbor agreement with a landowner for the protection of species that are listed as threatened or endangered under CESA, while shielding the landowner from regulatory liability if a listed species is accidentally taken under specified circumstances.

REGISTERED SUPPORT / OPPOSITION:

Support

California Native Plant Society
Defenders of Wildlife
Midpeninsula Regional Open Space District
Regional Water Authority
Sonoma Land Trust

Opposition

None on file

Analysis Prepared by: Keith Cialino / W., P., & W. / (916) 319-2096

Date of Hearing: March 22, 2022

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 2128 (Cooley) – As Introduced February 15, 2022

SUBJECT: State parks: California Admission Day: discounted admission

SUMMARY: Requires the Department of Parks and Recreation (State Parks) to grant 50 percent-discounted admission to the general public to each unit of the state park system operated by State Parks every year on September 9th, California Admission Day. Specifically, **this bill:**

- 1) Requires State Parks to grant 50 percent-discounted admission to the general public on September 9th, California Admission Day, to each unit of the state park system operated by State Parks.
- 2) Defines “50 percent-discounted admission” as a 50-percent reduction in the general public vehicle admission, parking, and day use fees. These discounts are subject to limitations that State Parks deems necessary to manage the state park system to avoid overcrowding and damage to natural and cultural resources and for public health and safety.
- 3) Specifies that the reduction in fees does not apply to camping fees, tour fees, swimming pool fees, fees for the use of boating facilities, museum and special event fees, any supplemental fees, or special event parking fees.

EXISTING LAW:

- 1) Requires State Parks to administer, protect, develop, and interpret the property under its jurisdiction in the state park system for the use and enjoyment of the public [Public Resources Code (PRC) § 5003].
- 2) Provides for State Parks to charge various fees for use of state parks (PRC § 5010).
- 3) Requires State Parks to offer free or reduced-rate admission to eligible persons under certain circumstances (*e.g.*, PRC § 5010.2; PRC § 5010.2.5; PRC § 5011.6).
- 4) Requires State Parks to develop a prioritized action plan to increase revenues and collection of user fees at state parks, and requires the plan to include strategies for generating new revenues and fee collection methodologies at state parks (PRC § 5019.92).
- 5) Authorizes State Parks to enter into agreements with any agency of the United States, any city, county, district, or other public agency, or any combination thereof, for the care, maintenance, administration, and control by any party to the agreement, of lands under the jurisdiction of any party to the agreement for the purpose of the state park system (PRC § 5080.30).
- 6) Authorizes State Parks to enter into an operating agreement with a qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a state park unit or units, or portion of a unit (PRC § 5080.42).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:1) **Purpose of the bill.** According to the author:

“On September 9th, 1850, California became the 31st state to join the United States of America. This date is known as California Admission Day. To celebrate, some state public offices, organizations, businesses, museums, and schools have special events to celebrate our state’s history on this day.

Accessibility to California State Parks can be a financial burden for those wanting to explore California’s majestic views, take advantage of outdoor recreation, and encounter the astonishing biological diversity. Although California Parks provides discounts for specified groups, the general public is not included in this benefit. Every Californian, regardless of economic status, should have access to these valued treasures.

This bill supports the health and education of Californians and exposes them to the biodiversity our state parks have to offer. Specifically, this bill creates a 50% discount upon entry to California State Parks on California Admission Day, which takes place every year on September 9th. It is important to connect Californians to their shared heritage, attract new visitors, and encourage the public to engage in California’s natural beauty.”

2) **Background:** Parks and open/green spaces provide numerous benefits to the community, environment, and economy. Use of parks and open spaces is correlated with a number of mental and physical health benefits, including, but not limited to, decreased risk of stress, anxiety, and depression, lessened symptoms of ADD/ADHD, as well as reduced risk of psychiatric illness for those with childhood exposure to open/green space.

The American Public Health Association’s policy statement on Improving Health and Wellness through Access to Nature states: “People of all ages and abilities enjoy higher levels of health and well-being when they have nature nearby in parks, gardens, greenways, naturalized schoolyards and playgrounds, and natural landscaping around homes and workplaces. Access to nature has been related to lower levels of mortality and illness, higher levels of outdoor physical activity, restoration from stress, a greater sense of well-being, and greater social capital.”

Parks and open spaces also provide environmental benefits as they can remove pollution and filter air, provide shade to reduce the urban heat island effect, attenuate noise, absorb water as an alternative to stormwater control systems, and replenish local groundwater reservoirs.

Parks and open spaces are also highly valued as economic drivers, as they increase property values and subsequent tax revenues by as much as twenty percent, draw new businesses and visitors to cities, and are among the top amenities sought after when choosing a place to live.

Inequitable access to parks. “Access” embodies both physical (*e.g.*, distance to a

park) and social (e.g., safety) aspects and varies widely throughout California. The Trust for Public Land's (TPL) 2021 ParkScore® index found that one in three Americans do not live within a 10 minute walk to a quality park. According to the TPL, two California cities rank among the top 10 in the nation with parks access (San Francisco #6 and Irvine #7) while California cities like Riverside, Los Angeles, Chula Vista, Stockton, Bakersfield, Santa Ana, and Fresno rank among the bottom third for parks access of the 100 most populated cities in the United States. According to *The Nature Gap: Confronting Racial and Economic Disparities in the Destruction and Protection of Nature in America*, a 2020 Hispanic Access Foundation and Center for American Progress report, 55 percent of Hispanic or Latino populations in California lack access to open space, and significantly fewer acres of green space are present in many Black, Hispanic, and Latino neighborhoods when compared to predominantly white neighborhoods.

Historical and continuing inequities, intersecting roadways, less acreage, lack of access to transportation, lack of safety, and physical condition/maintenance of spaces are just some of the barriers to parks and open space access. The COVID-19 pandemic also appears to have exacerbated existing inequities in access to parks and open spaces with lower income and underserved communities experiencing an even greater lack of access.

Recent access initiatives. Numerous efforts have been made in recent years to increase access to parks and open spaces. State Parks' Statewide Park Development and Community Revitalization Program has provided \$1.16 billion to California's communities in four grant rounds to create new parks and new recreation opportunities in underserved communities. The Outdoor Equity Grants Program at State Parks is intended to increase the ability of underserved and at-risk populations to participate in outdoor environmental educational experiences at state parks and other public lands. The Youth Community Access Program at the California Natural Resources Agency provides grant awards to expand access to parks, nature, and places of cultural and historic significance for youth in underserved communities. In addition, California First Partner Jennifer Siebel Newsom has been championing the Outdoor Access for All initiative in partnership with State Parks and the California State Parks Foundation.

Parks Forward process. Over the last ten years, State Parks has undergone a series of substantial reforms [AB 1589 (Huffman, 2012); AB 1478 (Blumenfield, 2012); SB 204, (Pavley, 2015)]. Together these reforms aimed to stabilize State Parks' revenue streams, develop tools to increase the revenue that State Parks generates, reform budgeting approaches, enhance partnerships with non-profit organizations, and prevent park closures that were proposed during the 2009 budget crisis.

AB 1589 and AB 1478 directed the creation of the Parks Forward Commission, which was a citizen review panel. The Parks Forward Commission released a final report in 2015, which included recommendations to improve relationships with nonprofit and other partners, to improve cultural and resource protection programs, and to expand access to parks. AB 1589 also required State Parks to develop a prioritized action plan to increase revenues and collection of user fees at state parks.

The plan was required to include strategies for generating new revenues and fee collection methodologies at state parks.

Free or reduced admissions at State Parks. There are 279 park units in the state park system. State Parks fully operates 187 of those park units. 92 park units are either fully operated or co-managed by park partners; of these, public agencies operate 44 park units, concessionaires operate 3 park units, and 45 units are either fully operated or co-managed by nonprofit entities. Currently, 19 of the 92 park units operated by nonprofits, public agencies, or concessionaires do not accept passes. Not all parks have day use fees.

Fees at units of the state park system are waived or discounted under a variety of existing scenarios, ranging from free admission days to reduced or free admission for certain citizens. For example, existing law authorizes State Parks to provide reduced cost passes to certain groups of people including seniors and low-income residents. Honorably discharged war veterans who are residents of California with an overall / combined rating at 50 percent or greater service-connected disability, or were held as prisoners of war by forces hostile to the United States, or recipients of the Medal of Honor are eligible to receive the Distinguished Veteran Pass which grants free access. Military personnel and veterans are admitted for free on Memorial Day and Veterans Day, but State Parks does not track how many free entries are granted on those days. State Parks cannot collect fees from kindergarten through 12th grade students on a class field trip, with some exceptions, when they are under the direction of school personnel and the school has made prior arrangements with State Parks.

The 2021-2022 budget created two programs to increase parks access. The Adventure Pass is a three-year pilot that offers free admission to 19 specific state parks for any fourth grade student and anyone accompanying them. The State Library Parks Pass will provide state park passes to public libraries across the state that may be checked out by library patrons. Passes are anticipated to be available in April 2022, and will provide free day-use admission to select state parks.

Past partnerships with Save the Redwoods League (League) and the California State Parks Foundation resulted in free admission to a subset of state parks on Green Friday (an alternative to shopping on Black Friday) from 2015 through 2017. The League and State Parks offered free day-use admission to more than 40 redwood state parks on the second Saturday of each month in 2018, with a one-day expansion to 100 redwood parks on October 13, 2018.

Free or discounted admission to Federal parks and managed lands. According to the National Park Service (NPS), most national parks do not have entrance fees. Out of more than 400 national parks, approximately 110 have admission fees that range from \$5 to \$35. The NPS has scheduled free admission to more than 400 parks on five days in 2022. The Secretary of the Interior signed Order 3387 on October 28, 2020, granting veterans and Gold Star Families free access to all national parks, wildlife refuges, and other Federal lands managed by the Department of the Interior

In addition, any fourth grade student can get a free pass through the Every Kid Outdoors Program that is valid for the duration of the fourth grader's school year

though the following summer (September-August), and there are a variety of discounted annual or lifetime passes available to seniors, disabled persons, and active military personnel and veterans.

Proposed discount on September 9th - California Admission Day. Vehicle admission and parking fees for state parks currently range from \$4 to \$15 on weekdays and \$4 to \$20 on weekends. Some park units also have hourly parking options. Aside from individual admission fees for State Historic Parks, State Parks does not charge for walk-ins. This bill proposes to offer a 50 percent discount to each unit of the state park system operated by State Parks on September 9th. This would commemorate September 9, 1850, which is the date that California became the 31st state to join the United States of America. The number of people utilizing the discount would likely depend on which day of the week September 9th falls on, as well as the public's awareness of California Admission Day.

Excluded from discount. Under this bill, the 50 percent discount would not apply to camping fees, tour fees, swimming pool fees, fees for the use of boating facilities, museum and special event fees, any supplemental fees, or special event parking fees. For park units managed by nonprofits, public agencies, or concessionaires, participation in the program would be at the discretion of the entity managing the park unit. Not all parks have day use fees. For example, Leucadia State Beach, Moonlight State Beach, and Carlsbad State Beach are managed by cities; however, they do not collect fees. San Diego parking areas are managed by a concessionaire, which would have to be notified and agree to a 50 percent reduction. Anyone who has already purchased an annual park pass would not benefit from the discount.

- 3) **Policy Considerations.** There will likely be uneven distribution of usage by park-goers on the discounted California Admission Day. Adequate staffing and planning for the logistics of increased visitation for a single day may be difficult for many state parks. While some popular parks may be able to predict larger crowds, other parks may be less prepared for a surge in day use on a single day. Furthermore, the reality that September 9th will fall on a different day of the week each year may make visitation even harder to predict. It may make sense to designate a specific day, such as the second Saturday of September, as California Admission Day. This would likely allow more people to visit parks, and make it easier to plan for any increases in attendance.

While the fiscal impact of this bill is outside the scope of this committee's jurisdiction, given the multiple reform bills aimed at stabilizing State Parks' revenues, a broad-based, discounted fee day may run counter to the continued implementation of those reforms, as day-use fees are important to the financial stability of the park system. However, a reduced fee day could be viewed as complementary to other policies that encourage access to parks, which has been a priority for the Legislature in recent years.

- 4) **Arguments in Support.** Those in support argue that this bill would provide an opportunity for all members of the general public to experience the beauty, cultural resources, and high-quality outdoor recreation that California state parks have to offer.
- 5) **Related Legislation**
AB 148 (Committee on Budget), Chapter 115, Statutes of 2021, among other provisions,

creates the Adventure Pass that waives day use entrance fees to an eligible unit of the state park system, as determined by State Parks, for any child in fourth grade with the pass. Specifies that the pass program is a three-year pilot.

AB 1358 (Cooley, 2017) was identical to this bill and was vetoed by Governor Brown.

AB 150 (Olson), Chapter 688, Statutes of 2013, allows State Parks to offer veterans and active duty or reserve military personnel of the United States Armed Forces or the National Guard, free day use access, or reduced fee access, to California State Parks on Memorial Day and Veterans Day.

REGISTERED SUPPORT / OPPOSITION:

Support

Midpeninsula Regional Open Space District

Opposition

None on file

Analysis Prepared by: Keith Cialino / W., P., & W. / (916) 319-2096

Date of Hearing: March 22, 2022

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

SB 463 (Dahle) – As Amended January 10, 2022

SENATE VOTE: 38-0

SUBJECT: Water: landowner or water right holder right to modify, repair, or replace jointly used conduits

SUMMARY: Permits a landowner or a water right holder to modify segments of a conduit if the conduit either crosses the landowner's property or conveys water to which the water right holder has a right, the conduit is not under the authority of a public agency, and the modification does not impede the flow of water to a water right holder. Specifically, **this bill:**

- 1) Permits a landowner that jointly uses a conduit to modify, repair, or replace the portions of a conduit that crosses or runs beneath their land if the conduit is not managed by a public agency and the modification does not impede the flow of water to another water right holder that uses the conduit.
- 2) Permits a landowner or water right holder that jointly uses a conduit to modify, repair, or replace the portions of a conduit that cross or run beneath another landowner's property if the conduit is not managed by a public agency and the modification, repair, or replacement does not impede the flow of water to another water right holder that uses the conduit.
- 3) Requires a landowner or water right holder that modifies, repairs, or replaces a jointly used conduit that crosses or runs beneath lands owned by a public landowner to obtain written permission. A public landowner may condition its permission or deny the request.
- 4) Requires a landowner or water right holder that modifies, repairs, or replaces portions of a jointly used conduit that cross or run beneath lands owned by a public landowner to provide a written notice with detailed information about the proposed work at least 30 days before start of the work.
- 5) Provides that a public landowner is not liable to any other landowner affected by a repair, modification, or replacement that it permits to proceed on or under its land.
- 6) Provides that any increase in operations or maintenance costs due to a modification, repair, or replacement of a conduit shall be the responsibility of the landowner or water right holder that makes the change.
- 7) Provides that nothing in this bill gives a landowner or water right holder the right to alter the flow of water in a manner that negatively affects another water right holder that jointly uses the conduit.
- 8) Clarifies that this bill is not intended to affect any water right or limit the authority of the State Water Resources Control Board, a regional water quality control board, or the Department of Fish and Wildlife.

- 9) Defines key terms for purposes of this bill and makes technical and conforming changes.

EXISTING LAW:

- 1) Defines “conduit” as a ditch, pipe line, or flume [Water Code (WC) § 7000].
- 2) Provides that when two or more landowners share the use of a conduit, well, or pumping plant to convey and lawfully use water, each landowner is responsible for reasonable expenses to maintain and repair the conduit, well, or pumping plant in proportion to each landowner’s use, unless a written agreement specifies another arrangement (WC § 7001).
- 3) Provides that if a landowner neglects to pay their proportion for the repair or maintenance of a conduit, well, or pumping plant, that landowner is liable in an action by other landowners that share the use of the conduit, well, or pumping plant to obtain that landowner’s contribution (WC § 7002).

FISCAL EFFECT: None. This bill is keyed non-fiscal.

COMMENTS:

- 1) **Purpose of this bill.** According to the author, “[this bill] would reduce water waste and contamination through earthen ditches over an easement by allowing them to be modified with an impervious material. In many cases across California, water loss to agriculture and residential property is a result of a poor delivery system. Piping can help to solve these issues for the consumer and can often reduce water waste by up to 50%. [...] Recent drought and demands on our water system have shown that the State desperately needs water conservation solutions.”
- 2) **Change in Property Rights Law.** This bill arises out of a specific dispute in the author’s district, but would have statewide impacts, as many property owners have water conveyance facilities crossing their land. In some cases, the landowner may have granted an easement or the conduit may be shared, and an agreement specifies conditions for maintenance or modification. In other cases, the rights of the conduit’s owner may not be clear, requiring the parties to seek judicial intervention to clarify those rights when conduit maintenance requires one property owner to enter the other owner’s property. If maintenance requires disturbance of the land, the conduit owner may be required to pay the landowner and/or accept liability for their actions.

This bill would transform these legal relationships between neighboring property owners with water conveyance facilities. Amendments to this bill deleted a requirement that a landowner receive written permission before going onto another landowner’s property (see June 28, 2021 version of this bill). As currently written, this bill allows one landowner along a conduit to go onto the property of another private landowner along the conduit to make repairs or modifications to the conduit *without* first obtaining permission from or providing notice to said landowner. It is not clear if this is the intent of the author, but when combined with the clause “notwithstanding any other law,” this bill creates a sweeping new right for one private landowner to enter another private landowner’s property without their permission. Some may characterize this right as “trespass.”

Suggested amendments. The committee recommends reinstating the requirement that a landowner receive written permission from another landowner before going on said landowner's property and deleting the clause "notwithstanding any other law" to avoid any unintended consequences and ensure that existing standards are upheld when modifying a conduit.

- 3) **Arguments in Support.** The California Association of Realtors supports this bill arguing that it allows landowners to maintain access to safe drinking water by working with neighboring landowners to "reasonably address modification, repairs or replacements" to conduits. "Hauled water is expensive, environmentally unsound and in some regions even banned."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors

Opposition

None on file.

Analysis Prepared by: Pablo Garza / W., P., & W. / (916) 319-2096

LEGISLATIVE OFFICE BUILDING
1020 N STREET, ROOM 160
SACRAMENTO, CA 95814
(916) 319-2096
FAX (916) 319-2196

Assembly
California Legislature

CHIEF CONSULTANT
PABLO GARZA

SENIOR CONSULTANT
KEITH CIALINO

COMMITTEE SECRETARY
WENDY BURKE

ASSEMBLY COMMITTEE ON
WATER, PARKS, AND WILDLIFE

REBECCA BAUER-KAHAN
CHAIR

AGENDA

Tuesday, March 22, 2022

Upon Adjournment of the 9:00 a.m. Water, Parks, and Wildlife Hearing
State Capitol, Room 444

INFORMATIONAL HEARING

SUBJECT: California's 30x30 Initiative

I. Opening Remarks

*Assemblymember Rebecca Bauer-Kahan, Chair, Assembly Water, Parks, and Wildlife
Committee*

II. Overview of Draft Pathways to 30x30 Strategy

*Jennifer Norris, Ph.D., Deputy Secretary for Biodiversity and Habitat, California Natural
Resources Agency*

*Mark Gold, D.Env., Deputy Secretary for Oceans and Coastal Policy, California Natural
Resources Agency, and Director of the Ocean Protection Council*

III. Public Comment

COMMITTEE ON WATER, PARKS, AND WILDLIFE

BAUER-KAHAN, Chair

INFORMATIONAL HEARING

Tuesday, March 22, 2022

Upon Adjournment of 9:00 am Hearing – State Capitol, Room 444

California's 30x30 Initiative

Terrestrial and freshwater biodiversity. California is a priority area for conservation due to its remarkable biodiversity and significant threats to its habitats and endemic species – species that are found only in a limited, restricted, and defined area or habitat, with no traces of its populations in any other part of the world. The state has the highest number of native and endemic plant species of any U.S. state¹ and is recognized as one of 36 global hotspots for plant diversity.² The state's natural and working lands provide habitat for approximately 650 bird species, 220 mammals, 100 reptiles, 75 amphibians, 70 freshwater fish, 100 marine fish and mammals, and 6,500 taxa of native plants.³ Climate change, land conversion, habitat fragmentation, invasive species, and pests threaten this biodiversity. For example, the state has already lost around 90 percent of its historical wetlands due primarily to habitat destruction.⁴

In 2018, the state launched the California Biodiversity Initiative, establishing multiple goals related to the future of the state's biodiversity.⁵ This included a goal to secure all California ecosystem types under a framework that would be consistent with global commitments under the Convention on Biological Diversity (CBD), including to protect 20 percent of terrestrial, freshwater, coastal, and marine ecosystems. The 2018-19 budget included \$2.5 million to launch the initiative. Implementation occurs alongside of and in coordination with other efforts, including the 2015 State Wildlife Action Plan, which details regional conservation strategies for the state's terrestrial, freshwater aquatic, and marine resources. Other state efforts to support and protect biodiversity include:

- Executive Order B-54-18, which directed the Department of Fish and Wildlife (DFW) and the California Department of Food and Agriculture to partner in protecting California's native vegetation and animals while restoring and protecting habitat;⁶
- The California Essential Habitat Connectivity Project, which identified large blocks of remaining, intact habitat and natural landscapes, and modeled linkages between them that need to be maintained, particularly as wildlife corridors;
- The Natural Community Conservation Planning (NCCP) program, which takes an ecosystem approach to planning for the protection and perpetuation of biological diversity. There are 17

¹ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109107>

² <https://www.nps.gov/goga/learn/management/upload/-1214-HOTSPOT-California-On-The-Edge-1.pdf>;
<https://www.cepf.net/our-work/biodiversity-hotspots/hotspots-defined>

³ <https://www.californiabiodiversityinitiative.org/pdf/california-biodiversity-action-plan.pdf>

⁴ https://mywaterquality.ca.gov/eco_health/wetlands/

⁵ <https://www.californiabiodiversityinitiative.org/>

⁶ <https://www.californiabiodiversityinitiative.org/pdf/executive-order-b-54-18.pdf>

approved NCCPs and more than nine in various stages of planning that cover more than eight million acres and nearly 400 special status species;

- The Regional Conservation Investment Strategies (RCIS) program, which encourages a voluntary, non-regulatory regional planning process. This program includes regional conservation assessments and mitigation credit agreements; and
- The California Biodiversity Council, which seeks to improve coordination and cooperation between the various resource management and environmental protection organizations at federal, state, and local levels.

Ocean and coastal biodiversity. California is home to one of the most diverse coastal and ocean ecosystems in the world. Yet, climate change and other stressors threaten these ecosystems. Warmer water temperatures, disease, invasive species, and the collapse of sea star populations has placed California's North Coast kelp forests in a state of emergency, with South Coast kelp struggling as well. Ocean acidification and hypoxia (lack of oxygen) impede biomass production and impact species composition. Other stressors include pollution and habitat loss.

California has taken various actions to protect the state's ocean and coastal resources. In 2012, the state completed a science-based, stakeholder-driven process to designate 124 marine protected areas (MPAs) that cover 16 percent of state waters. The network provides varying levels of protection, with some reserves prohibiting all "take." The Ocean Protection Council (OPC) adopted the 2020-2025 Strategic Plan to Protect California's Coast and Ocean, which noted the need to significantly increase and strengthen targets for marine protection, halt and reverse species decline, and revive ecosystem services. The plan adopted a goal to enhance coastal and marine biodiversity, including targets to: (1) protect, restore, or create 10,000 acres of coastal wetlands by 2025; (2) increase the acreage of coastal wetlands in California by 20 percent by 2030 and 50 percent by 2040; and (3) preserve 15,000 acres of seagrass beds and create an additional 1,000 acres by 2025. The OPC also intends to assess MPA performance and capacity to provide ecosystem resilience.

Conservation in California. California has established a number of programs and agencies, such as the state's conservancies and the Wildlife Conservation Board, that acquire land as a natural resource to be held as a public trust. Most of the state-owned wildlands – undeveloped and noncultivated property – are primarily under the control of the DFW, the Department of Parks and Recreation, and the Department of Forestry and Fire Protection.

In some cases, improvements are made to the land in order to afford public access or recreational opportunities. In other cases, degraded land is restored in order to create habitat which supports wildlife. In still other cases, the land is simply held undisturbed in order to insulate it from development pressures. The common goal underlying these actions is the protection of land through public ownership.

A tool for protecting the ocean waters of the state is the MPA network described above. The Marine Life Protection Act of 1999 directed the state to redesign California's system of MPAs to function as a network in order to increase coherence and effectiveness in protecting the state's marine life and habitats, marine ecosystems, and marine natural heritage.

Global, national, and state efforts. There is broad consensus within the scientific community that we are in the midst of a sixth mass extinction that, like climate change, is human-caused and threatens

humanity's survival.⁷ Scientists and governments have put forth a call to action to protect 30 percent of the earth's ocean, land, and water resources by 2030 (the 30x30 goal), with a recent IPCC report noting that conserving half by 2050 or sooner (also known as a 50x50 goal) may be necessary to restore the ability of natural ecosystems to cope with the damage wreaked on them.⁸ World leaders plan to meet in China in 2022 at the CBD 15th Conference of Parties with the intention of adopting a 30x30 goal.⁹

At the federal level, the House Select Committee on the Climate Crisis released a report in June 2020 recommending Congress establish a 30x30 goal for U.S. lands and ocean areas, prioritizing lands and waters with high ecological, biodiversity, and carbon sequestration value.¹⁰ The report also recommends Congress develop and fund initiatives to ensure equitable access to natural spaces for individuals in environmental justice communities.

California became the first state to commit to protecting 30 percent of its land and water by the end of the decade. Executive Order N-82-20, issued by Governor Newsom in October 2020, establishes the goal of protecting thirty percent of California's lands and waters by 2030. To further this goal, the Executive Order directed the California Natural Resources Agency (CNRA) and other relevant state agencies, in consultation with the California Biodiversity Collaborative, to develop and report strategies to the Governor no later than February 1, 2022. The executive order requires that these strategies protect and restore biodiversity and enable enduring conservation measures on a broad range of landscapes, among other things.

President Biden issued Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (January 27, 2021),¹¹ that included tasking the Secretary of the Interior, in consultation with the Secretary of Agriculture, the Secretary of Commerce, the Chair of the Council on Environmental Quality, and the heads of other relevant agencies, to submit a report (released in May 2021¹²) to the National Climate Task Force recommending steps that the United States should take, working with state, local, Tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of U.S. lands and waters by 2030.

Nevada's legislature passed a 30x30 resolution in May 2021. South Carolina, New York, and Michigan have 30x30 legislation in process. Hawaii committed in 2016 to effectively manage 30 percent of its marine environment by 2030. Maine's Climate Action Plan, established by the Governor's office, includes a commitment to 30x30.

Pathways to 30x30 strategy. As required by Governor Newsom's Executive Order, California's Draft Pathways to 30x30 Strategy was released on December 15, 2021.¹³ The Pathways to 30x30 Strategy is

⁷ <https://www.pnas.org/doi/10.1073/pnas.1922686117>

⁸ <https://www.theguardian.com/environment/2022/feb/28/ipcc-issues-bleakest-warning-yet-impacts-climate-breakdown>

⁹ <https://www.cbd.int/article/draft-1-global-biodiversity-framework>

¹⁰ <https://climatecrisis.house.gov/report>

¹¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

¹² <https://www.doi.gov/priorities/america-the-beautiful>

¹³ <https://www.californianature.ca.gov/pages/30x30>

intended to set California on the path to successfully implement the 30x30 conservation goal. The strategy:

- Describes the key objectives and core commitments that are a part of California’s 30x30 conservation framework.
- Defines conservation for the purpose of California’s 30x30 initiative and establishes a current baseline of conserved areas.
- Outlines strategic actions necessary to achieve the 30x30 target.
- Introduces CA Nature, a suite of publicly available applications to identify conservation opportunities and track collective progress.

For the purpose of California’s 30x30 initiative, “conserved” is defined as land and coastal water areas that are durably protected and managed to support functional ecosystems, both intact and restored, and the species that rely on them. The draft strategy estimates that 24 percent of California’s lands and 16 percent of its coastal waters are already conserved. To reach the 30x30 target, California will need to conserve an additional 6 million acres of lands and a half million acres of coastal waters by 2030.

Stakeholders and members of the public were able to provide written feedback on the draft strategy through February 15, 2022. A final version of the strategy that incorporates public input is anticipated in the coming months.

Policy considerations: Priorities and direction. Conserving an additional 6 million acres of lands and a half million acres of coastal waters by 2030 may be an ambitious goal when compared to the pace and scale of conservation in California in the preceding decades. While it is important for California to address the biodiversity and climate crises, it is unclear how much the implementation of the 30x30 goal will change the status quo. Much of the success of 30x30 will depend on the priorities that shape which lands and waters are conserved. The 30x30 goal could serve as a call to action to bring the various stakeholders together under a common banner to increase the pace and scale of conservation. It could also set up some contentious fights in pursuit of new protections and, depending on how the 30x30 goal is implemented, may lead to litigation.

To date, the Legislature has not provided direction, priorities, or expectations to the state on how to achieve the goals of 30x30. AB 3030 (Kalra, 2020) would have established new land, water, and ocean protection goals, including to protect 30 percent of the state’s land areas and water by 2030. AB 3030 was held in Senate Appropriations Committee.

Engagement. The CNRA accepted public input while developing the draft strategy, including early formal government to government consultations with California Native American tribes.¹⁴ Public input was then accepted on the draft strategy. In general, supporters of the 30x30 policy argue that it elevates the importance of conservation within state, regional, and local planning processes and decision-making around policies, funding, programs, and projects. Also, it is consistent with the administration’s natural resources priorities related to biodiversity and making access to nature and parks more equitable.

¹⁴ <https://www.californianature.ca.gov/pages/faqs#publicengagement>

Opponents argue that the implementation of the 30x30 goal could impact access and opportunities for recreational fishing and hunting, and commercial fishing. For example, from the perspective of commercial fishers, the state could determine that existing marine protections are insufficient and require new limits or restrictions on, or outright closures of, existing fisheries to achieve the 30x30 goal. It is important to note that taking action to restrict access to commercial fisheries would require additional action, some of which would involve legislation.

Funding. A sustainable source of funding will be needed to implement 30x30. Typically, the state has relied on bond funding to protect, conserve, restore, and enhance natural resources. While some funding from prior bonds remains, the Legislature has declined in recent years to advance multi-billion dollar bond measures to the ballot [e.g. AB 352 and AB 1298 (2019); SB45 and AB 3256 (2020); SB 45, AB 125, and AB 1500 (2021)]. Voters rejected Proposition 3, an initiative bond measure, in 2018, which included funding for water-related infrastructure and environmental projects. AB 2387, a \$7.43 billion climate adaptation bond, is currently pending in the Assembly Water, Parks and Wildlife Committee.

The Greenhouse Gas Reduction Fund (GGRF) has also provided substantial funding for these purposes, but new revenues to this fund declined sharply in early 2020.¹⁵ Revenues have rebounded, but GGRF proceeds are utilized for many other priorities. California's natural and working lands are eligible for funding under GGRF because they provide a variety of ecosystem services including important opportunities for climate mitigation that reduce greenhouse gas emissions from wildfire and land conversion, and store carbon in biomass and soils.

The 2021-2022 budget includes \$3.69 billion General Fund over three years to support investments that address the state's multi-faceted climate risks. Of that allocation, \$768 million one-time General Fund was set aside for the 2022-2023 and 2023-2024 budget years to support implementation of the state's Natural and Working Lands Climate Smart Strategy and 30x30 Pathways strategy. The administration has said that a proposed budget with more detail will be released in Spring 2022.

Supporters argue that adopting the 30x30 goal better positions conservation entities to attract and secure non-state sources of funding, such as philanthropic funding or the federal Land and Water Conservation Fund (LWCF). Congress permanently reauthorized the LWCF under the Great American Outdoors Act (2020) with \$900 million set aside annually for conservation purposes.

Even with funding set aside for conserving more land and water, the ongoing operations and maintenance costs for these conserved lands and waters will need to be addressed as well. Bond funding typically cannot be utilized for operations and maintenance. In addition, there are existing deferred maintenance and land management needs at many state owned properties which also require funding.

¹⁵ <https://www.caclimateinvestments.ca.gov/about-cci>