

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2060 (Soria) – As Amended April 16, 2024

SUBJECT: Lake and streambed alteration agreements: exemptions

SUMMARY: Exempts a temporary urgency permit for diversion to underground storage from Lake and Streambed Alteration Agreement (LSAA) requirements if specified conditions are met. Specifically, **this bill**:

- 1) Exempts a temporary urgency permit for diversion to underground storage from LSAA requirements if conditions specified in (#2) and (#3), below, are met.
- 2) Prohibits a temporary urgency permit for diversion to underground storage from diverting or applying water to the following:
 - a) Any barns, ponds, or lands that are not vegetated and where manure or waste from an animal facility is applied;
 - b) An agricultural field identified as an outlier with respect to nitrogen application under the Irrigated Lands Regulatory Program;
 - c) An area where the diversion could cause damage to critical levees, infrastructure, wastewater and drinking water systems, or drinking water wells, or exacerbate flood risk or other health and safety concerns; and
 - d) An area that has not been in active irrigated agricultural cultivation within the past three years unless it contains facilities already constructed for the purpose of groundwater recharge or managed wetlands.
- 3) Requires a temporary urgency permit for diversion to underground storage to utilize all of the following:
 - a) Either existing infrastructure or temporary pumps;
 - b) Existing groundwater recharge locations, where available;
 - c) No new permanent infrastructure or permanent construction; and
 - d) For diversions from rivers and streams, protective screens on temporary pump intakes to minimize impacts of diversion on fish and other aquatic life. The protective screens shall meet certain specifications and follow recommendations from the Department of Fish and Wildlife (DFW).

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) Exempts immediate emergency work necessary to protect life or property, immediate emergency repairs to necessary to maintain public services as a result of a disaster, emergency projects undertaken to maintain, repair, or restore an existing highway damaged due to a natural disaster, and the diversion of floodflows for groundwater recharge from the need to obtain an LSAA (FGC § 1610).
- 3) Requires the entity performing the emergency work to notify the DFW of the work, in writing, within 14 days of beginning the work, and specifies that any work described in the emergency notification that does not meet the criteria for the emergency work is a violation of the provisions of the LSAA statute if the entity did not first notify DFW in accordance with FGC § 1602 or § 1611 (FGC § 1610).
- 4) Exempts the diversion of floodflows for groundwater recharge from requirements to obtain a water right if specified conditions are met (Water Code § 1242.1).
- 5) Authorizes the State Water Resources Control Board (State Water Board) to issue a temporary urgency permit (water right) so long as the diversion does not harm other lawful users of water and meets other conditions. Temporary urgency permits shall automatically expire after 180 days, unless renewed (Water Code § 1425 *et seq.*).
- 6) Authorizes the State Water Board to issues a temporary permit (water right) to divert water for groundwater recharge so long as the diversion does not harm other lawful users of water and meets other conditions. Temporary permits for groundwater recharge shall automatically expire after five years, unless renewed (Water Code § 1433 *et seq.*).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** The author argues that it “is now more important than ever that we do everything in our power to capture water during wet years to be better positioned to endure the dry years. We saw extensive flooding across our state in 2023. Our state must act now to address the challenges we know we face from climate change: wetter wet years and drier dry years. It is crucial that we provide every possible tool to water managers in our state, ensuring they can capture wet-year water and put it to beneficial use in dry years. [This bill] is a common-sense approach that will support water managers – especially groundwater sustainability agencies – by allowing them to divert identified near-flood and flood-stage water into groundwater recharge by spreading that water onto farm fields and other open land. This has tremendous potential to help local government entities meet their goals under the Sustainable Groundwater Management Act.”
- 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 LSAs 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).

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.

Recharging flood flows. There is wide interest in capturing high water flows or flood flows following large storms for the purpose of groundwater recharge to address problems caused by groundwater overdraft and water scarcity during times of drought. If a groundwater recharge project involves diverting surface water from a river or stream to a recharge area, a water right or permit is required. Obtaining a new water right can be challenging so, several projects in recent years have opted to seek a temporary urgency (180 day) permit to divert flood flows to groundwater recharge. The State Water Board can also issue a five-year temporary permit for groundwater recharge.

Both types of temporary permits are a conditional approval to divert and use available water that has not been claimed by a water right holder. Permits are junior to all water rights and include terms and conditions that prohibit diversions in times of water shortage when the demands of other right holders may not be met. Temporary permits are typically processed more quickly than standard permits and may be renewed, but are subject to change or revocation at any time. This bill exempts temporary urgency permits that divert water to underground storage from the requirement to obtain an LSAA.

Executive Order (EO) N-4-23 and SB 122. During the last drought, Governor Newsom issued EO N-4-23 which, among other provisions, exempted groundwater recharge projects that redirect flood flows occurring between March 10, 2023, and June 1, 2023 from the need to have an LSAA, comply with CEQA, and the need for a water right permit. Under the EO, projects had to adhere to specified criteria, including the need for simple screens to be installed on temporary pump intakes and limitations on where the water can be diverted to in order to prevent water quality issues. The authority in EO N-4-23 was modified and extended through January 1, 2029 via SB 122 last year. Under SB 122, groundwater recharge projects that divert “floodflows” do not need a water right or temporary permit or to obtain an LSAA. In addition, the diverted water cannot be applied to certain types of land (e.g., where manure has been applied in the previous 45 days) and the diversion must meet the following criteria:

- Use existing diversion infrastructure or temporary pumps;
 - Use existing groundwater recharge locations;
 - Cannot use new permanent infrastructure or permanent construction; and
 - Use protective screens on temporary pumps to protect fish and other aquatic life when water is diverted directly from a river or stream. The protective screens must be constructed of any rigid material, perforated, woven, or slotted that allows water to pass while physically excluding fish. In addition, a protective screen must be parallel to the flow of water and adjacent to the water's edge and meet other specified criteria.
- 3) **Arguments in support.** The Stockton East Water District (SEWD) writes in support of this bill and note that in their own efforts to recharge groundwater, SEWD has avoided diverting water to agricultural lands due to the requirement to consult with DFW (SEWD relies on existing groundwater recharge facilities). SEWD maintains that consultation with DFW adds an additional step to “an already lengthy and arduous permitting process with the [State] Water Board.” SEWD contends that this bill “is another step towards the much-needed streamlining of temporary floodwater diversion permits, which are necessary for our groundwater basin, and many like it throughout California, to achieve sustainability.”
- 4) **Related legislation.** SB 122 (Committee on Budget and Fiscal Review), Chapter 51, Statutes of 2023, exempted the diversion of floodflows for groundwater recharge from requirements to obtain a water right and an LSAA if specified conditions are met, among other substantive provisions.

AB 830 (Soria) of 2023 would have exempted temporary operation of existing infrastructure or temporary pumps to divert flood stage flows, or near-flood stage flows, to groundwater recharge from LSAA requirements if certain conditions were met. AB 830 was held on the suspense file in the Senate Appropriations Committee.

AB 1581 (Kalra) of the current legislative session exempts certain entities 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, but still requires a similar notification process. AB 1581 is pending in the Senate Natural Resources and Water Committee.

AB 1024 (Aguiar-Curry) of 2023 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 was held on the suspense file in the Senate Appropriations Committee.

AB 1458 (Frazier) of 2021 would have exempted fire-prevention and mitigation measures approved by a state or local agency from the LSAA process. AB 1458 was never heard in the Assembly Water, Parks, and Wildlife Committee.

AB 1420 (Aguiar-Curry) of 2017 was substantially similar to AB 1024 of the current legislative session. AB 1420 died in the Senate Appropriations Committee.

SB 506 (Nielsen) of 2017 would have limited diversions and obstructions regulated by an LSAA and would exempt maintenance and repair facilities for in-stream agricultural diversions. SB 506 was vetoed by the Governor.

SB 1026 (Nielsen) of 2016 would have limited diversions and obstructions regulated by the LSAA process and would have exempted maintenance and repair of facilities for in-stream agricultural diversions. SB 1026 failed passage in the Senate Natural Resources and Water Committee.

SB 418 (Sher), Chapter 736, Statutes of 2003, revised and reauthorized the LSAA process.

REGISTERED SUPPORT / OPPOSITION:

Support

African American Farmers of California
American Pistachio Growers
California Apple Commission
California Avocado Commission
California Blueberry Association
California Blueberry Commission
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
California Tomato Growers Association
California Walnut Commission
Nisei Farmers League
Olive Growers Council of California
Stockton East Water District
Western Agricultural Processors Association
Western Plant Health Association

Opposition

None on file

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