
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Robert Hertzberg, Chair

2017 - 2018 Regular

Bill No: AB 1420 **Hearing Date:** June 27, 2017
Author: Aguiar-Curry
Version: February 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: Dennis O'Connor

Subject: Water rights: small irrigation use: lake or streambed alteration agreements

BACKGROUND AND EXISTING LAW

Under current law, any person may obtain a right to appropriate water for a small domestic, small irrigation, or livestock stockpond use by registering the use with the State Water Resources Control Board (state board) and then putting the water to reasonable and beneficial use, subject to certain conditions. This authorization does extend to stream segments for which the Director of Fish and Wildlife establishes proposed streamflow requirements.

One of the conditions requires the registration to include a certification that the registrant has contacted a representative of the Department of Fish and Wildlife (DFW) and has agreed to comply with conditions set forth by DFW in what is often referred to as a section 1602 or "streambed alteration" permit. These permits establish the conditions under which a permittee may "substantially divert or obstruct the natural flow of, or substantially change or use any material from the streambed."

Current law also requires the state board to establish general conditions to which all appropriations of water for small domestic, small irrigation, and livestock stockpond use are subject. The state board adopted the general conditions for small irrigation use registrations on 9/20/13 and for small domestic and livestock stockpond uses on 1/27/14.

PROPOSED LAW

This bill would do three things:

- 1) Requires the state board to give priority to adopting, by June 30, 2021, general conditions to store water for small irrigation use during times of high streamflow in exchange for that registrant reducing diversions during periods of low streamflow.
 - a) The priority is subordinate to the state board's adoption of principles and guidelines for both of the following:
 - i) Maintaining instream flows in streams along the north coast.
 - ii) Diversion and use of water for cannabis cultivation.
 - b) The requirement is contingent upon the state board determining there are funds to develop the general conditions.
 - c) The general conditions are to cover both the following:
 - i) Off-stream storage reservoirs.

- ii) On-stream storage reservoirs located on stream reaches where fish are not present, if the reservoirs will not substantially affect fish habitat in downstream reaches where fish are present.
 - d) Adoption of the general condition is deemed categorically exempt from CEQA provided it does not result in the relaxation of existing streamflow standards.
- 2) Exempts from having to get a streambed alteration permit anyone that submits a registration application for small domestic, small irrigation, or livestock stockpond that has been approved by the state board, as follows:
 - a) All the following must occur:
 - i) The applicant submits payment of the fee required for a streambed alteration permit with the registration.
 - ii) The applicant submits to DFW a copy of any condition imposed by DFW as a part of the general conditions for registering a small domestic, small irrigation, or livestock stockpond.
 - iii) DFW notifies the applicant in writing that the exemption applies to the registered water use.
 - b) DFW must notify the applicant in writing within 60 of receiving the registration and fee whether the exemption applies or not.
 - c) If DFW determines that the applicant has failed to comply with the conditions for the exemption, the applicant would then need to get a streambed alteration permit.
 - d) Similar provisions would apply to renewals or amendments of registrations.
- 3) Clarifies that if DFW establishes minimum stream flow requirements for a stream segment, one cannot register a new small domestic, small irrigation, or livestock stockpond until the state board updates the general terms and conditions to reflect that new minimum streamflow requirement.

ARGUMENTS IN SUPPORT

According to the author, "AB 1420 will streamline the permitting process and reduce redundant regulatory requirements for a farm or vineyard owner to obtain a registration from the State Water Resources Control Board (SWRCB) to divert water into a small irrigation pond. Many vineyard and farm owners on the Central Coast and North Coast rely on water diverted from streams that support salmon and steelhead. These agricultural water diversions can occur during the irrigation season when streamflow is naturally low and juvenile salmon and steelhead are in the streams."

"To provide farmers with a reliable source of water and protect fish populations during critical months, a registration program for small irrigation ponds was created in collaboration with agricultural and environmental organizations. However, the process for obtaining the registration is time-consuming and overly-burdensome. As a result, less than 10 registrations have been approved since its creation. This bill will streamline the permitting process to divert water into small irrigation ponds to encourage greater program participation and protect the habitat of salmon and steelhead populations."

“AB 1420 will also reduce redundant regulatory requirements for small irrigation registrations, as well as small domestic and livestock registrations. Currently, applicants must navigate between requirements for the Department of Fish and Wildlife (DFW) and the SWRCB. In addition to streamlining the permitting process for small irrigation ponds, this bill ensures that DFW has conditions—for those registrations that have already been approved by the SWRCB—that registrants can meet in order to obtain DFW approval. These conditions, if met, will ensure that registrants do not need to dedicate additional time to obtaining a lake or streambed alteration agreement from DFW.”

ARGUMENTS IN OPPOSITION: None received

COMMENTS

AB 964 (Huffman, 2011). The genesis of the small irrigation registration program was the significant drop in streamflow in the Russian River that occurred when sprinklers used to protect vineyards against frost kicked on. The jump in water demand for the sprinklers, in addition to usual demands on the river, lead to insufficient streamflow for salmon and other fish.

The small irrigation use registration process was created in order to create an expedited water right for a pond that stores less than 20 acre-feet annually so that a vineyard could draw from its pond for frost protection instead of directly from the stream. However, the bill was not limited to frost protection uses. The state board, at that time, identified that one quarter of its currently-pending water rights applications were for uses of 20 acre-feet per year or less. Therefore, creation of a small irrigation registration process was expected to streamline permitting for some of those small irrigation uses and help the state board eliminate some of its water right permitting backlog.

So Far, Results Are Disappointing. There is general agreement that the current process is less than ideal. Applications are not nearly as high as expected when AB 964 was enacted. This bill intends to remedy that.

SUGGESTED AMENDMENTS: None

SUPPORT

California Association of Winegrape Growers (Co-Sponsor)
 Wine Institute (Co-Sponsor)
 Association of California Water Agencies
 California Farm Bureau Federation
 California Trout
 Community Alliance with Family Farmers
 The Nature Conservancy
 Trout Unlimited
 Valley Vintners

OPPOSITION

None Received