

ASSEMBLY BILL

No. 1420

Introduced by Assembly Member Aguiar-Curry
(Principal coauthor: Senator Dodd)

February 17, 2017

An act to add Section 1602.1 to the Fish and Game Code, and to amend Sections 1229 and 1229.1 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1420, as introduced, Aguiar-Curry. Water rights: small irrigation use: lake or streambed alteration agreements.

Existing law, the Water Rights Permitting Reform Act of 1988, authorizes a person to obtain a right to appropriate water for a small domestic use, small irrigation use, or livestock stockpond use upon first registering the use, as those uses are defined by the act, with the State Water Resources Control Board and thereafter applying the water to reasonable and beneficial use with due diligence. The act requires the registration of water use to be made upon a form prescribed by the board that requires, among other things, a certification that the registrant has contacted a representative of the Department of Fish and Wildlife and has agreed to comply with conditions set forth by the department. The act requires the board to establish reasonable general conditions to which all appropriations made pursuant to the act are required to be subject, including, among other things, that all conditions lawfully required by the department are conditions upon the appropriations. The act provides that the board is not required to adopt general conditions for small irrigation use until the board determines that funds are available for that purpose, and that a registration for small irrigation use pursuant to the act is not authorized until the board establishes

general conditions for small irrigation use to protect instream beneficial uses, as specified.

This bill would require the board to give priority to adopting, on or before June 30, 2021, except as provided, general conditions that permit a registrant to store water for small irrigation use during times of high streamflow in exchange for the registrant reducing diversions during periods of low streamflow, as specified. The bill would require that the actions of the board under these provisions be deemed an action taken for the protection of the environment for purposes of specified California Environmental Quality Act guidelines, if those actions do not result in the relaxation of streamflow standards.

Existing law exempts certain stream segments subject to certain minimum streamflow requirements from the provisions of the act upon proper registration.

This bill, if the Director of Fish and Wildlife establishes proposed streamflow requirements for a stream segment, as specified, would instead prohibit the authorization of a registration for that stream segment until the board establishes instream flow requirements as a part of the general conditions applicable to that stream segment. The bill would require that the establishment of those instream flow requirements be done after the board considers the proposed streamflow requirements, if proposed by the director.

Existing law prohibits an entity 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 from depositing certain material where it may pass into any river, stream, or lake, without first notifying the department of that activity and entering into a lake or streambed alteration agreement, if required by the department to protect fish and wildlife resources. Existing law exempts certain routine maintenance and operation activities from those requirements after the initial notification and agreement, certain emergency activities from those notification and agreement requirements and certain activities authorized by a license or renewed license issued for cannabis cultivation from those agreement requirements. Existing law authorizes the department to establish a graduated schedule of fees to be charged to any entity subject to the notification and agreement provisions and requires any fees received to be deposited into the Fish and Game Preservation Fund.

This bill would exempt an entity from the requirement to enter into a lake or streambed alteration agreement with the department if the

entity submits a board-approved registration or renewed or amended registration for water use to the department and the department determines certain requirements are met, including, the payment of a fee required for a lake or streambed alteration agreement and the submission of a copy of any department conditions imposed for the registration for water use. With respect to the submission of a renewed or amended registration, the bill would require the department to modify the existing conditions, or add new conditions, which would become part of the renewed or amended registration, if the department determines the conditions for the use will not protect fish and wildlife resources that may be substantially adversely affected by the activity authorized by the renewed or amended registration. If the department determines that an entity has failed to comply with these conditions, the exemption, upon written notice by the department, would no longer apply and the entity would be required to comply with the regular notice and agreement requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1602.1 is added to the Fish and Game
 2 Code, to read:
 3 1602.1. (a) (1) Notwithstanding subdivision (a) of Section
 4 1602, an entity that submits a registration of water use made
 5 pursuant to Section 1228.3 of the Water Code that has been
 6 approved by the State Water Resources Control Board is deemed
 7 to have given the notification required by paragraph (1) of
 8 subdivision (a) of Section 1602, and shall not be required to obtain
 9 an agreement from the department for the activity that the
 10 registration covers for the term of the registration, if all of the
 11 following occur:
 12 (A) The fee specified in paragraph (3) of subdivision (a) of
 13 Section 1602 is submitted to the department with the registration.
 14 (B) The entity submits to the department a copy of any
 15 conditions imposed by the department pursuant to paragraph (2)
 16 of subdivision (a) of Section 1228.6 of the Water Code.
 17 (C) The department notifies the entity in writing that the
 18 exemption in this paragraph applies to the registered water use.

1 (2) The department shall notify the entity in writing whether
2 the exemption in this paragraph applies to the registered water use
3 within 60 days of receiving the registration and fee.

4 (3) If the department determines that an entity has failed to
5 comply with any of the department conditions described in
6 paragraph (1), the failure shall not constitute a violation of this
7 chapter, and the exemption provided in paragraph (1), upon written
8 notice by the department, shall no longer apply and the entity shall
9 comply with Section 1602.

10 (b) (1) An entity that submits a renewal of registration or
11 amended registration made pursuant to Section 1228.5 or 1228.7
12 of the Water Code that has been approved by the State Water
13 Resources Control Board is deemed to have given the notification
14 required by paragraph (1) of subdivision (a) of Section 1602, and
15 shall not be required to obtain an agreement from the department
16 for the activity that the registration covers for the term of the
17 renewed or amended registration, if all of the following occur:

18 (A) The fee specified in paragraph (3) of subdivision (a) of
19 Section 1602 is submitted to the department with the renewal of
20 registration or amended registration, as applicable.

21 (B) The entity submits to the department a copy of any
22 conditions imposed by the department pursuant to paragraph (2)
23 of subdivision (a) of Section 1228.6 of the Water Code.

24 (C) The department determines the conditions described in
25 subparagraph (B), together with any other conditions in the
26 renewed or amended registration, will protect fish and wildlife
27 resources that may be substantially adversely affected by the
28 activity that the renewed or amended registration authorizes.

29 (D) The department notifies the entity in writing that the
30 exemption in this paragraph applies to the registered water use.

31 (2) The department shall notify the entity in writing whether
32 the exemption in paragraph (1) applies to the registered water use
33 within 60 days of receiving the registration and fee.

34 (3) If the department determines the conditions described in
35 paragraph (1), together with any other conditions in the renewed
36 or amended registration, will not protect fish and wildlife resources
37 that may be substantially adversely affected by the activity that
38 the renewed or amended registration authorizes, the department
39 shall modify the existing conditions, or add new conditions to the
40 renewed or amended registration, and notify the entity in writing

1 that the exemption in paragraph (1) applies to the registered water
2 use with the modified or new conditions, which shall become part
3 of the renewed or amended registration.

4 (4) If the department determines that an entity has failed to
5 comply with any of the department conditions described in
6 paragraph (1) or (3), the failure shall not constitute a violation of
7 this chapter, and the exemption provided in paragraph (1), upon
8 written notice by the department, shall no longer apply and the
9 entity shall comply with Section 1602.

10 SEC. 2. Section 1229 of the Water Code is amended to read:

11 1229. (a) The board is not required to adopt general conditions
12 for small irrigation use pursuant to subdivision (a) of Section
13 1228.6 *and this section* until the board determines that funds are
14 available for that purpose.

15 (b) A registration for small irrigation use pursuant to this article
16 is not authorized until the board establishes general conditions for
17 small irrigation use pursuant to subdivision (a) of Section 1228.6
18 to protect instream beneficial uses.

19 (c) The board may establish general conditions for some
20 methods of diversion or categories of small irrigation use before
21 establishing general conditions for other methods or categories,
22 in which case a registration for small irrigation use is authorized
23 only for those methods or categories for which the board has
24 established the general conditions for the protection of instream
25 beneficial uses.

26 (d) (1) *Except as necessary to adopt principles and guidelines*
27 *implementing paragraph (1) of subdivision (a) of Section 1259.4*
28 *or 13149, and subject to subdivision (a), the board shall give*
29 *priority to adopting, on or before June 30, 2021, general conditions*
30 *that permit a registrant to store water for small irrigation use*
31 *during times of high streamflow in exchange for that registrant*
32 *reducing diversions during periods of low streamflow for diversions*
33 *from coastal streams entering the Pacific Ocean and streams*
34 *entering the San Francisco Bay, not including the Sacramento*
35 *River and San Joaquin River, for the following:*

36 (A) *Off-stream storage reservoirs.*

37 (B) *On-stream storage reservoirs located on stream reaches*
38 *where fish are not present, if the reservoirs will not substantially*
39 *affect fish habitat in downstream reaches where fish are present.*

1 (2) *An action of the board pursuant to this subdivision shall be*
2 *deemed an action taken for the protection of the environment for*
3 *purposes of Section 15308 of Title 14 of the California Code of*
4 *Regulations, if those actions do not result in the relaxation of*
5 *existing streamflow standards.*

6 SEC. 3. Section 1229.1 of the Water Code is amended to read:

7 ~~1229.1. (a) This article does not apply to those stream segments~~
8 ~~for which the Director of Fish and Wildlife establishes proposed~~
9 ~~streamflow requirements pursuant to Section 10002 of the Public~~
10 ~~Resources Code, notwithstanding the July 1, 1989, deadline for~~
11 ~~preparation of the requirements.~~

12 *1229.1. (a) If the Director of Fish and Wildlife establishes*
13 *proposed streamflow requirements for a stream segment pursuant*
14 *to Section 10002 of the Public Resources Code, regardless of*
15 *whether those requirements were proposed before July 1, 1989, a*
16 *registration for that stream segment pursuant to this article is not*
17 *authorized until the board establishes instream flow requirements*
18 *as a part of the general conditions applicable to that stream*
19 *segment. The establishment of those instream flow requirements*
20 *shall be done after the board considers the proposed streamflow*
21 *requirements, if proposed by the Director of Fish and Wildlife.*

22 (b) Notwithstanding subdivision (a), ~~this article applies to a~~
23 ~~registration filed before the Director of Fish and Wildlife~~
24 ~~establishes proposed streamflow requirements for the source of~~
25 ~~water supply for the registration. registration may be renewed even~~
26 ~~if the board has not yet adopted instream flow requirements. The~~
27 ~~conditions for renewal under subdivision (c) of Section 1228.5~~
28 ~~may include any conditions the Department of Fish and Wildlife~~
29 ~~determines to be necessary to protect stream-related fish and~~
30 ~~wildlife resources on a source of water supply for which the~~
31 ~~Director of Fish and Wildlife has established proposed streamflow~~
32 ~~requirements pursuant to Section 10002 of the Public Resources~~
33 ~~Code.~~