



MEMORANDUM

TO: Water Resources Committee and Alternates, Board of Directors and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: March 6, 2023

RE: Water Resources Committee to Consider Recommendations on Legislation /
Board of Directors to Consider Same

Recommendation

Recommend to the Board of Directors to adopt the following positions on state legislation:

- Adopt a position of “Support” on SB 23 (Caballero), Expedited Permitting for Water Supply and Flood Risk Reduction Projects
- Adopt a position of “Favor” on SB 361 (Dodd), Water resources: stream gages.

Summary

H.R. 186 (McClintock) – Water Supply Permitting Coordination Act

RECOMMENDATION: SUPPORT

OBJECTIVE: Improve Water Infrastructure Affecting Authority Member Agencies

Summary

This legislation would authorize the Secretary of the Interior to coordinate Federal and State permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency for permit processing, with detailed timelines for completion of environmental compliance documents.

Status

H.R. 186 was introduced on January 9, 2023, and has been referred to the House Natural Resources Committee.

Importance to the Authority

This bill would establish Reclamation as the lead agency for permit processing for water storage projects on federal lands owned by the Departments of Interior or Agriculture.



Pros:

- The bill, if enacted, would establish a single lead federal agency responsible for coordination and permit processing for water storage projects, which is anticipated to expedite the permitting process for these projects.

Cons:

- None identified.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to H.R. 186, Water Supply Permitting Coordination Act.

Fiscal Impact: Unknown. Reduce costs associated with environmental permitting compliance for CVP projects advanced under Reclamation law or the WIIN Act.

Business Analysis: Reduce costs associated with environmental permitting compliance for CVP projects advanced under Reclamation law or the WIIN Act.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to additional costs associated with environmental permitting compliance for CVP projects advanced under Reclamation law or the WIIN Act.

Business Analysis: SLDMWA and its member agencies could be subject to additional costs associated with environmental permitting compliance for CVP projects advanced under Reclamation law or the WIIN Act.

[S.B. 23 \(Caballero\), Expedited Permitting for Water Supply and Flood Risk Reduction Projects](#)

RECOMMENDATION: SUPPORT

OBJECTIVE: Restore Central Valley Project Water Supply for Member Agencies

Summary

SB 23 is sponsored by the Association of California Water Agencies (ACWA). The bill contains numerous provisions seeking to increase the efficiency of the regulatory permitting process for water supply and flood risk reduction projects, without exemption from any environmental protections. The qualifying projects under the bill include the following.

1. "Flood risk reduction projects," which include a project or plan that is proposed by a public agency or a public utility, to construct, alter, retrofit, maintain, manage, or improve a facility, channel, levee, or flood control modification, in which flood risk reduction or sea level rise protection is an objective of the project.
2. "Water Supply Project," which includes a project or plan proposed by a public agency or a public utility, to construct, alter, retrofit, maintain, manage, or improve a groundwater recharge, desalination, recycled water, water conveyance, surface water storage, stormwater capture, or water treatment facility.



Mitigation Measures for Water Quality Certifications

Watershed scale planning of environmental restoration and habitat enhancements has been identified as the most beneficial approach for species and has been advocated by fish and wildlife agencies and advocates. The use of Watershed Plans has been adopted by the State Water Board but has not been implemented in practice. For project applicants, Watershed Plans amount to “plug and play” mitigation strategies that reduce permit negotiation times and the costs associated with project delay. For the environment, it helps ensure mitigation dollars are spent where they provide the most benefit to the impacted species.

SB 23 would require the State Water Board and Regional Water Boards to accept a Watershed Plan for the purposes of issuing a Section 401 Water Quality Certification. The bill would require the water boards to use the following types of approved plans as Watershed Plans for purposes of implementing the Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) in issuing project certifications:

1. Habitat Conservation Plans that include biological goals for aquatic resources;
2. Natural Communities Conservation Plans that include biological goals for aquatic resources; and,
3. Habitat Management Plans that include biological goals for aquatic resources.

Unless the water board issuing a project certification determines in writing that a plan does not substantially meet the definition of a Watershed Plan, the bill would require the water board to accept, as terms of the project certification, avoidance, minimization, and compensatory mitigation for impacts to waters of the state provided through compliance with any Watershed Plan, so long as the public entity administering the plan identifies, tracks, and publicly reports the impacts to waters of the state and the manner in which they are addressed by such avoidance, minimization, and compensatory mitigation. To ensure mitigation investments stay focused where they are most beneficial to species, the bill would prohibit the water boards from imposing any additional project certification terms and conditions mandating avoidance, minimization, or compensatory mitigation for impacts to waters of the state beyond those in an approved Watershed Plan.

Lake and Streambed Alteration Agreements

SB 23 would require the California Department of Fish and Wildlife (CDFW) to issue a final Lake and Streambed Alteration Agreement (LSAA) within 180 days of receipt of a notification from a project proponent for water supply and flood risk reduction projects, provided that:

1. CDFW determines that the project will substantially adversely affect an existing fish and wildlife resource;
2. The project proponent submits a complete notification for the project; and
3. The project proponent submits environmental documentation required by the California Environmental Quality Act (CEQA).

The final LSAA would include any reasonable measures mutually agreed to by the project proponent and CDFW in accordance with existing law. If CDFW and the project proponent are not able to reach a final agreement on all measures, then the project proponent may proceed in accordance with a final agreement issued by an arbitration panel pursuant to existing law, including reasonable measures



necessary to protect the existing fish and wildlife resources substantially adversely affected by the project. The bill would allow CDFW and the project proponent to mutually agree to an extension of the 180-day period for issuance of a final agreement if needed. A deadline for the conclusion of negotiations proposed by the bill is believed would motivate the parties to a more expeditious issuance of the final agreement.

Section 401 Water Quality Certifications

The bill would create a new optional State Water Resources Control Board (State Water Board) and Regional Water Quality Control Board (Regional Water Board) process for securing a federal Clean Water Act Section 401 Water Quality Certification for flood risk reduction and water supply projects. The optional process would require the applicable water board to issue project certification within 180 days after a project proponent completes the following:

1. Requests pre-application consultation;
2. Files a complete application for project certification;
3. If required for the project, files a complete application or petition for all water rights approvals or amendments necessary to implement the project; and
4. Submits environmental documentation required by CEQA.

The bill would establish a process for a water board's determination of application completeness, including an option to appeal to the State Water Board a determination regarding application completeness. Following any State Water Board appeal determination, the bill would allow the option for the project proponent to challenge the determination of completeness in court.

Determinations of application completeness have been a major source of permitting delay, often because there is no clear process or statutory limit on how long the process may take.

Reporting Requirements

SB 23 would require, beginning on January 1, 2025, and annually thereafter, the water boards to prepare a public report for the relevant legislative policy and budget committees regarding the implementation and outcome of the bill's requirements.

Supplemental Consultation

This bill would authorize a state agency with the authority to permit a water supply or flood risk reduction project to do any of the following.

1. Enter into an agreement with a project proponent to recover costs for actions authorized by this section to expedite the review of environmental documents and review processing and issuances of project certifications, and other authorizations, permits, and approvals for water supply projects and flood risk reduction projects with the goal of completing permit review and approval in an expeditious manner.
2. Hire or compensate staff or contract for services needed to achieve these goals.
3. Work collaboratively with project proponents and other agencies with jurisdiction over the water supply project or flood risk reduction project to implement an integrated regulatory approach, similar to efforts implemented by the state permitting agencies for projects funded by the San Francisco Bay Area Measure AA, the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Program.



By creating an expanded opportunity for supplemental consultation with a permitting agency before and during the permitting process, it is believed that late-in-the-process surprises in mitigation requirements may be avoided, thereby averting costly project redesign and further delay.

Status

S.B. 23 was introduced on December 5, 2022, was amended on February 9, 2023, and has been referred to the Senate Committee on Natural Resources, Water, and Senate Committee on Environmental Quality.

Importance to the Authority

As climate change extends the length and frequency of drought and the intensity of storms, communities across California are faced with difficult decisions regarding water supply, water use, and flood risk reduction. Changes in climate are necessitating critical adaptation of water supply and flood risk reduction infrastructure. State and local agencies are in a race against rapidly changing hydrology to build new projects or retrofit existing infrastructure, including water conveyance and treatment, recycled water, desalination, stormwater capture, surface and groundwater storage, sea level rise, and levee projects.

The Governor's Water Supply Strategy, released last August, identified permitting delays as one of the key issues to be addressed for all types of water supply projects. As such, there is a unique opportunity to achieve permit streamlining that has so far eluded water and flood risk reduction agencies. The timely delivery of critical water supply and flood risk reduction projects depends on whether project applicants and state and federal agencies can find a way to expedite project permitting, including pre-application consultation, environmental document review, and permit application and approval. Even after environmental documentation is completed, project permitting is mired in delays caused by overlapping jurisdictions of state and federal agencies, agency culture and staffing issues, and a lack of urgency for projects racing against the accelerating impacts of climate change. State permitting agencies have in recent years been under-resourced and statutory permitting deadlines are often missed, particularly for large projects. The permitting delays lead to costs increases in the tens of millions or more for large projects.

The urgency of the climate crisis has increased the need for expedited permitting. There is now an opportunity to work with the Legislature and the Newsom Administration to address issues that cause permitting delays for water supply and flood risk reduction projects.

Pros:

- Would improve species habitat mitigation outcomes through the use Watershed Plans that allow for mitigation investments at the best available sites for species recovery and resilience.
- Would expedite state permitting of water supply and flood protection projects.
- Would save public agencies and public utilities significant costs by averting delays on projects, including Authority member agency projects in which delay can amount to millions of dollars per year.

Cons:

- The complexity of the environmental permitting process makes changes difficult even when the changes improve environmental outcomes for species, save public funding, and accelerate adaptation to a rapidly changing climate.



Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to S.B. 23 (Caballero), Expedited Permitting for Water Supply and Flood Risk Reduction Projects.

Fiscal Impact: Unknown. Reduce costs associated with development of projects for flood risk reduction and water supply.

Business Analysis: Potential to increase the efficiency of the permitting process for flood risk reduction and water supply.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA or its member agencies may be subject to additional costs associated with water supply or flood risk mitigation projects.

Business Analysis: SLDMWA or its member agencies could be subject to additional costs associated with the development of water supply or flood risk mitigation projects.

S.B. 361 (Dodd) – Water Resources: Stream Gages

RECOMMENDATION: FAVOR

OBJECTIVE: Restore Central Valley Project Water Supply for Member Agencies

Summary

This bill would require DWR and the State Water Board, upon appropriation of funds by the Legislature, to reactivate, upgrade, and install new stream gages where lack of data contributes to conflicts in water management or where water can be more effectively managed for multiple benefits, including but not limited to, the following benefits:

1. Water supply management;
2. Flood management;
3. Water quality management; and,
4. Ecosystem management.

The bill would require DWR and the State Water Board to use the recommendations and data provided in the California Stream Gaging Prioritization Plan 2022 (Plan) to complete the following actions by 2030:

1. Reactivate and maintain at least 161 historical stream gages;
2. Upgrade at least 48 stream gages to collect additional streamflow data with the installation of additional sensors, such as temperature and dissolved oxygen sensors, equipped for telemetry, namely recording and transmitting of data without in-person effort, or at which a flow rating curve to convert stage to flow could be added;
3. Add temperature sensors to at least 536 active stream gages;
4. Install new stream gages in at least 432 watersheds;
5. Improve gage quality and management by establishing minimum operation and maintenance standards; and,



6. Develop gage data standards to support accessibility and interoperability, such that data from all sources can be housed, analyzed, and shared on a common interface.

The bill would require DWR and the State Water Board, in consultation with CDFW, the Department of Conservation, the Central Valley Flood Protection Board, interested stakeholders, and, to the extent they wish to consult, local agencies, to develop the plan to fund the long-term maintenance of these stream gages and data management tools based on the funding recommendations in the plan and other considerations.

The bill would require the data from all stream gages operating with any public money to be published as provisional data within 10 days of collection and made publicly available on the state's open water data platforms. DWR and the State Water Board, in consultation with the California Water Data Consortium or some equivalent entity, would be required to develop and adopt a set of standards and processes for assessing, tracking, and reporting the accuracy of stream gages, evapotranspiration data, water meters, and other critical data inputs for water management.

Finally, the bill would require DWR and the State Water Board to consult with interested stakeholders to develop a plan to identify the gaps in the network of automated weather stations and eddy covariance towers to ensure accurate and comprehensive data collection to support and validate methods to estimate other key elements to the water budget, including evapotranspiration.

Status

S.B. 361 was introduced on February 8, 2023, and has been referred to the Senate Committee on Natural Resources and Water.

Importance to the Authority

As climate change continues to exacerbate changes in the state's hydrological patterns, California must maximize the benefits of its water supply. As part of that effort, understanding current stream flow conditions is critical to ensuring water is being provided to both people and nature when and where they need it. The state's stream gage network is long overdue for an upgrade, and investing in a more robust system will provide agencies with the accurate data needed to support informed decision-making regarding water management. However, funding for the purposes of this bill is currently left open; it will be important for correspondence on support on SB 361 to emphasize that a water use fee or tax is not an appropriate method for maintenance and operations of these gages.

Pros:

- The bill, if enacted, would direct an expansion of the state's stream gage network, which needs updating.

Cons:

- Lack of specificity of funding mechanism

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to S.B. 361 (Dodd), Water Resources: stream gages.



Fiscal Impact: Unknown. Potential for funding needs for long-term maintenance of stream gages.

Business Analysis: Improve data gathering for CVP and SWP operations.

Option 2

Take no action.

Fiscal Impact: Unknown.

Business Analysis: SLDMWA and its member agencies could face exposure related to lack of data collection necessary for project operations.

Guidelines for Taking Positions on Legislation

A number of controversial bills are introduced each year in the Congress and in the California Legislature. It is important to understand how the Authority takes positions on legislation.

Policy

By Agenda Item 9, dated December 8, 2022, the Board adopted the Fiscal Year 2024 Objectives.

Water Authority's Positions on Legislation

The Water Authority takes positions on legislation that, if enacted, would impact Water Authority members, consistent with Water Authority Board adopted Goals and Objectives. The Water Authority may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). The Water Authority's staff and consultants testify and advocate with legislators and staff through meetings and member agency contacts on all positions except Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of the Water Authority's position is provided to the legislator. Nothing in this section should be read to preclude the Executive Director or his or her delegee from taking an informal support or informal oppose position on behalf of the Water Authority that is consistent with adopted legislative or policy objectives, or to preclude the Executive Director from communicating a position on emergency legislation after obtaining the concurrence of the Chair, or the Chair's designee, provided that the Executive Director informs the Board regarding such positions on emergency legislation no later than the next regularly scheduled Board meeting.

Amendment Development Process

If the Water Authority takes an Oppose Unless Amended or Support if Amended position, the Water Authority will typically discuss the concepts for the amendments at the meeting. Then Water Authority staff, in consultation with Committee and/or Board Members as needed, will develop the amendments after the meeting.

Information Sharing

To provide adequate information to the entire Water Authority membership, the Water Authority provides legislative updates, posts positions and other information on our website, and sends out advisories and alerts on key legislation.



Memo to SLDMWA Water Resources Committee and Board Members
March 6, 2023

The Water Authority's legislative department is available to provide specific information on bills on request and Board Members are encouraged to communicate Water Authority positions on priority legislation in meetings with legislative staff, consistent with Water Authority policy. The Water Authority's Water Policy Director appreciates being informed by Water Authority members of positions taken by Water Authority members on legislation.

BILL TEXT

BILL TEXT

AMENDED IN SENATE FEBRUARY 9, 2023

SENATE BILL

No. 23

Introduced by Senator Caballero

December 5, 2022

An act to add Section 1618 to the Fish and Game Code, and to add the heading of Article 1 (commencing with Section 13370) to Chapter 5.5 of Division 7 of, and to add Article 2 (commencing with Section 13389.1) to Chapter 5.5 of Division 7 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 23, as amended, Caballero. Water supply and flood risk reduction projects: expedited permitting.

(1) 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 deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, except under specified conditions, including requiring the entity to send written notification to the Department of Fish and Wildlife regarding the activity in the manner prescribed by the department.

This bill would require a project proponent, if already required to submit a notification to the department, to complete and submit environmental documentation to the department for the activity in the notification. The bill would require the department, under prescribed circumstances, to take specified actions within 180 days, or a mutually agreed-to extension of time, of receiving notification from a project proponent.

(2) *Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (state board) and the California regional water quality control boards (regional boards) are the principal state agencies with primary authority over water quality matters. Existing law authorizes the state board to issue permits and promulgate procedures consistent with federal law.*

This bill would require, if an applicant requests a preapplication consultation, the state board or regional boards to adhere to specified procedures in reviewing the application before issuing project certification. The bill would authorize a project proponent to petition the state board to reconsider a determination of application completeness, or to appeal to the state board any regional board's determination of application completeness.

This bill would require the state board or regional boards to use specified approved conservation and habitat management plans as watershed plans for purposes of implementing the procedures in issuing a project certification, unless the state board or regional boards issuing a project certification determine in writing that an approved plan does not substantially meet the definition of a watershed plan, as defined. The bill would place requirements on the state board and regional boards regarding its determination on what is considered a watershed plan, including making a proposed written determination, and providing for public comment and a written response on that proposed determination. The bill would require, by January 1, 2025, the state board to review and adopt general water quality certifications for general nationwide permits issued by the United States Army Corps of Engineers under specified federal law within the state for discharge of dredge and fill material in connection with water supply projects and flood risk reduction projects. The bill would require, on January 1, 2025, and annually thereafter, the state board and regional boards to prepare, provide public notice of, make available for public review on their internet website, and submit to the relevant legislative committees, as specified, a report regarding specified information related to water supply projects and flood risk reduction projects.

This bill would authorize a state agency, defined to mean any agency, board, or commission, including the state board or the regional boards, with the power to issue a permit that would authorize a water supply project or authorize a flood risk reduction project, to take specified actions in order to complete permit review and approval in an expeditious manner. The bill would make findings and declarations

related to the need to expedite water supply projects and flood risk reduction projects to better address climate change impacts while protecting the environment.

~~The California Safe Drinking Water Act provides for the operation of public water systems and imposes on the State Water Resources Control Board various duties and responsibilities for the regulation and control of drinking water in the state, including, among other things, overseeing the issuance and enforcement of public water system permits, as provided:~~

~~Existing law authorizes specified works of improvement for the control, conservation, and utilization of destructive flood waters and the reclamation and protection of lands that are susceptible to overflow by flood waters:~~

~~This bill would express the intent of the Legislature to enact subsequent legislation to expedite the regulatory permitting process for water supply and flood risk reduction projects, as provided:~~

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

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

1 *SECTION 1. Section 1618 is added to the Fish and Game Code,*
2 *to read:*

3 1618. (a) *For purpose of this section, the following definitions*
4 *apply:*

5 (1) *“Flood risk reduction project” means a project or plan*
6 *subject to department jurisdiction under this chapter that is*
7 *proposed by a public agency or a public utility to construct, alter,*
8 *retrofit, maintain, manage, or improve a facility, channel, levee,*
9 *or flood control modification where flood risk reduction or sea*
10 *level rise protection is an objective of the project.*

11 (2) *“Notification” means the documents described in*
12 *subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision*
13 *(a) of Section 1602.*

14 (3) *“Project proponent” means a public agency or public utility*
15 *that proposes a water supply project or flood risk reduction project.*

16 (4) *“Water supply project” means a project or plan subject to*
17 *department jurisdiction under this chapter that is proposed by a*
18 *public agency or a public utility to construct, alter, retrofit,*
19 *maintain, manage, or improve a groundwater recharge,*

1 *desalination, recycled water, water conveyance, surface water*
2 *storage, stormwater capture, or water treatment facility.*

3 *(b) A project proponent shall do both of the following:*

4 *(1) Submit a complete notification for the project to the*
5 *department when required under this chapter.*

6 *(2) Complete and submit environmental documentation to the*
7 *department for the activity in the notification, required under*
8 *Division 13 (commencing with Section 21000) of the Public*
9 *Resources Code.*

10 *(c) Notwithstanding any other law, if the department determines*
11 *that a water supply project or flood risk reduction project will*
12 *substantially adversely affect an existing fish and wildlife resource*
13 *and the project proponent completes the actions described in*
14 *subdivision (b), the department shall, within 180 days of receipt*
15 *of a notification from the project proponent, issue the final*
16 *agreement that includes any reasonable measures mutually agreed*
17 *to by the project proponent and the department pursuant to*
18 *subdivision (a) of Section 1603 unless subparagraph (D) of*
19 *paragraph (4) of subdivision (a) of Section 1602 applies because*
20 *the department did not issue a draft agreement to the project*
21 *proponent within 60 days of the date the notification is complete.*
22 *If the department and the project proponent are not able to reach*
23 *a final agreement on all measures, the project proponent may*
24 *proceed in accordance with a final agreement issued by an*
25 *arbitration panel pursuant to subdivision (b) of Section 1603,*
26 *including reasonable measures necessary to protect the existing*
27 *fish and wildlife resources substantially adversely affected by the*
28 *water supply project or flood risk reduction project.*

29 *(d) If the department and the project proponent mutually agree*
30 *to an extension of the date for which the department shall provide*
31 *a final agreement, the date mutually agreed upon shall apply*
32 *instead of the 180-day time period.*

33 *SEC. 2. The heading of Article 1 (commencing with Section*
34 *13370) is added to Chapter 5.5 of Division 7 of the Water Code,*
35 *to read:*

36

37 *Article 1. Implementation of the Federal Water Pollution*
38 *Control Act*

39

1 SEC. 3. Article 2 (commencing with Section 13389.1) is added
2 to Chapter 5.5 of Division 7 of the Water Code, to read:

3
4 Article 2. Water Supply and Flood Risk Reduction Permits

5
6 13389.1. For the purpose of this article, the following
7 definitions apply:

8 (a) “Flood risk reduction project” means a project or plan that
9 is proposed by a public agency or a public utility to construct,
10 alter, retrofit, maintain, manage, or improve a facility, channel,
11 levee, or flood control modification where flood risk reduction or
12 sea level rise protection is an objective of the project.

13 (b) “Habitat conservation plan” means any plan approved by
14 the United States Fish and Wildlife Service pursuant to the federal
15 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

16 (c) “Habitat management plan” means any habitat conservation
17 plan, natural communities conservation plan, habitat management
18 plan, or other plan agreement or permit approved by or entered
19 into by the Department of Fish and Wildlife in connection with the
20 authorization of taking of an endangered, threatened, or candidate
21 species pursuant to the California Endangered Species Act
22 (Chapter 1.5 (commencing with Section 2050) of Division 3 of the
23 Fish and Game Code).

24 (d) “Natural communities conservation plan” means any plan
25 approved by the Department of Fish and Wildlife pursuant to
26 Chapter 10 (commencing with Section 2800) of Division 3 of the
27 Fish and Game Code.

28 (e) “Procedures” means the “State Wetland Definition and
29 Procedures for Discharge of Dredged or Fill Material to Waters
30 of the State” (as adopted by the State Water Resources Control
31 Board on April 2, 2019) as they may be amended from time to
32 time.

33 (f) “Project certification” means water quality certification
34 required by, and issued under, Sections 13160, 13260, and 13376.

35 (g) “Project proponent” means a public agency or public utility
36 that proposes a water supply project or flood risk reduction project.

37 (h) “State agency” means any agency, board, or commission,
38 including the state board or the regional boards, with the power
39 to issue a permit that would authorize a water supply project or
40 authorize a flood risk reduction project.

1 (i) “Water supply project” means a project or plan that is
2 proposed by a public agency or a public utility to construct, alter,
3 retrofit, maintain, manage, or improve a groundwater recharge,
4 desalination, recycled water, water conveyance, surface water
5 storage, stormwater capture, or water treatment facility.

6 (j) “Watershed plan” means a document or set of documents,
7 developed in consultation with relevant stakeholders, that has a
8 specific goal of aquatic resource restoration, establishment,
9 enhancement or preservation within a watershed, that addresses
10 aquatic resource conditions in the watershed, addresses multiple
11 stakeholder interests and land uses, includes information about
12 identification of priority sites for aquatic resource restoration and
13 protection, includes implementation measures to attain aquatic
14 resource protection goals for the watershed, and is used by the
15 state board or regional boards in determining appropriate terms
16 and conditions, including avoidance, minimization, and
17 compensatory mitigation conditions, to be included in project
18 certifications.

19 13389.2. (a) (1) This section shall apply if, before filing an
20 application for project certification for a water supply project or
21 flood risk reduction project, the project proponent requests a
22 preapplication consultation with the state board or regional
23 boards, as appropriate.

24 (2) The project proponent shall initiate the preapplication
25 consultation at least 60 days before the filing of the application
26 for project certification. Any meeting pursuant to the consultation
27 shall occur no less frequently than once every 60 days thereafter
28 until the project is fully certified.

29 (3) The 60-day preapplication period may run concurrently
30 with any other preapplication or postapplication consultation
31 period that a project proponent enters into as required by law with
32 any other regulatory agency with jurisdiction.

33 (4) Nothing in this section shall require an applicant to request
34 or engage in a preapplication consultation not otherwise required
35 by law for any project certification.

36 (b) Notwithstanding any other law, the state board or regional
37 boards shall issue project certification within 180 days if a project
38 proponent does all of the following:

39 (1) Requests a preapplication consultation.

40 (2) Files a complete application for project certification.

1 (3) If required for the project, files a complete application or
2 petition under Chapter 2 (commencing with Section 1250) of Part
3 2 of Division 2 for all water rights approvals or amendments
4 necessary to implement the project.

5 (4) Completes and submits completed environmental
6 documentation to the state board or regional boards for the project
7 certification required under Division 13 (commencing with Section
8 21000) of the Public Resources Code.

9 (c) The state board or regional board shall notify the project
10 proponent in writing whether the submittal is complete no later
11 than 30 days after the submittal of an application or petition. If
12 the submittal is determined to be incomplete, the state board or
13 regional boards shall provide the project proponent with a written
14 notification that includes a full list of specific items that were
15 complete and incomplete, and indicate the manner by which
16 incomplete items can be made complete, including a list and
17 thorough description of the specific information needed to complete
18 the application or petition. The list shall be limited to those items
19 actually required by the state board or regional board under
20 applicable law. After the state board or regional board issues the
21 list, it shall not request or require the project proponent to provide
22 any new or additional information that was not identified in the
23 initial list of items found to be incomplete. No list shall include an
24 extension or waiver of any of the time periods prescribed by this
25 section.

26 (d) If the state board or regional board does not provide the
27 project proponent with a written notification that includes a list
28 of specific items that are complete and incomplete within 30 days
29 after receipt of the initial application or petition, the application
30 or petition shall be deemed complete.

31 (e) (1) If the state board or regional board provides the written
32 notification determining that the application or petition is
33 incomplete, the project proponent shall act within 45 days after
34 receipt of the notification to submit supplemental materials in
35 order to complete the application or petition, or to appeal the
36 determination, in whole or in part.

37 (2) Upon receipt of any supplemental materials from the project
38 proponent, the state board or regional board shall, within 30 days
39 after receipt of the notification, determine the completeness of the
40 application or petition with the supplemental material and whether

1 to issue the notification of a complete application. In making this
2 determination, the state board or regional board shall be limited
3 to whether the application or petition as supplemented includes
4 the information specified in the prior notification of
5 incompleteness.

6 (f) (1) If the supplemented application or petition is again
7 determined to be incomplete, the state board or regional board
8 shall provide the project proponent with a written notification
9 specifying the parts of the supplemented application or petition
10 that are still incomplete and indicate the manner by which they
11 can be made complete, including a full list and thorough
12 description of the information needed to complete the application
13 or petition.

14 (2) The project proponent shall act within 30 days of receipt of
15 that notification to submit additional supplemental materials in
16 order to complete the application or petition, or to appeal the
17 notification of incompleteness, in whole or in part.

18 (3) If the state board or regional board does not, within 30 days
19 of receipt of application materials from applicant, provide the
20 project proponent with a written notification specifying those parts
21 of the supplemented application or petition that are still incomplete
22 and indicating the manner by which they can be made complete,
23 the application or petition as supplemented shall be deemed
24 complete for purposes of this section.

25 (4) If the project proponent elects to supplement a previously
26 supplemented application or petition, the deadlines and obligations
27 set forth in this subdivision shall also apply to any supplemented
28 application or petition.

29 (g) The state board or regional board may, in the course of
30 processing the application, request the project proponent to clarify,
31 correct, or otherwise supplement the information required for the
32 application under subdivision (c). This shall not affect any specified
33 deadlines under this section.

34 (h) The project proponent may petition the state board to
35 reconsider a determination of application completeness, or may
36 appeal to the state board any regional board's determination of
37 application completeness. The project proponent may petition for
38 reconsideration or appeal a determination of completeness, either
39 in whole or in part, and the appropriate board shall act on the
40 petition for reconsideration or appeal no later than 60 days after

1 receipt of the appeal in accordance with subdivision (c) of Section
2 65943 of the Government Code. Within 30 days of the timely
3 issuance by the state board of its final written determination of
4 completeness, the project proponent may challenge the
5 determination of completeness in court.

6 (i) This section does not supersede or otherwise amend any
7 deadlines set forth by or in the federal Water Pollution Control
8 Act (33 U.S.C. Sec. 1251 et seq.).

9 (j) Except as provided in subdivision (h), this section does not
10 amend the procedures or any deadlines for administrative or
11 judicial appeal of a project certification as set forth under state
12 or federal law.

13 13389.3. (a) The Legislature finds and declares all of the
14 following:

15 (1) On April 2, 2019, the state board adopted the “State Wetland
16 Definition and Procedures for Discharges of Dredged or Fill
17 Material to Waters of the State” (procedures) that requires that
18 any habitat conservation plan approved by the United States Fish
19 and Wildlife Service pursuant to the federal Endangered Species
20 Act (16 U.S.C. Sec. 1531 et seq.) before December 31, 2020, and
21 any natural communities conservation plan approved by the
22 Department of Fish and Wildlife pursuant to the Natural
23 Communities Conservation Planning Act before December 31,
24 2020, shall be used by the state board and regional boards in
25 issuing project certifications, so long as the plan includes
26 biological goals for aquatic resources.

27 (2) The procedures further require that the state board or
28 regional boards shall use the approved plans as watershed
29 management plans under the procedures unless the state board
30 or regional boards determine that the approved habitat
31 conservation plan or the natural communities conservation plan
32 does not substantially meet the definition of a watershed plan, as
33 set forth in the procedures, for aquatic resources.

34 (3) To expedite water supply projects and flood risk reduction
35 projects to better address climate change impacts while protecting
36 the environment, the Legislature finds that for purposes of issuing
37 project certifications in compliance with the procedures, as they
38 may be amended from time to time, the state board or regional
39 boards shall expand their reliance on approved habitat
40 conservation plans, natural community conservation plans, and

1 other habitat management plans for provision of avoidance,
2 minimization, and compensatory mitigation for project
3 certifications, so long as those plans are approved by other state
4 and federal agencies with jurisdiction and address biological goals
5 for aquatic resources.

6 (b) Unless the state board or regional boards issuing a project
7 certification determine in writing that an approved plan does not
8 substantially meet the definition of a watershed plan, the state
9 board or regional boards shall use the following approved plans
10 as watershed plans for purposes of implementing the procedures
11 in issuing a project certification:

12 (1) Habitat conservation plans that include biological goals for
13 aquatic resources.

14 (2) Natural communities conservation plans that include
15 biological goals for aquatic resources.

16 (3) Habitat management plans that include biological goals for
17 aquatic resources.

18 (c) (1) Unless the state board or regional boards issuing a
19 project certification determine in writing that an approved plan
20 does not substantially meet the definition of a watershed plan, the
21 state board or regional boards shall accept, as terms of the project
22 certification, any avoidance, minimization, and compensatory
23 mitigation for impacts to waters of the state provided through
24 compliance with any approved habitat conservation plan, natural
25 community conservation plan, or habitat management plan, so
26 long as the public entity administering the habitat conservation
27 plan, natural community conservation plan, or habitat management
28 plan identifies, tracks, and publicly reports the impacts to waters
29 of the state and the manner that they are addressed by the
30 avoidance, minimization, and compensatory mitigation.

31 (2) The state board or regional boards shall not impose on any
32 project certification terms and conditions mandating avoidance,
33 minimization, or compensatory mitigation for impacts to waters
34 of the state in addition to those already provided pursuant to
35 approved plans administered as set forth in paragraph (1).

36 (3) For the state board or regional boards to make a
37 determination that an approved habitat conservation plan, natural
38 communities conservation plan, or habitat management plan that
39 includes biological goals for aquatic resources does not
40 substantially meet the definition of a watershed plan for purposes

1 *of issuing a project certification, the state board or regional boards*
2 *shall do both of the following:*

3 *(A) Make a proposed written determination, supported by*
4 *specific written findings of insufficiency, available for public review*
5 *and comment for at least 30 days prior to the adoption of the*
6 *determination of insufficiency.*

7 *(B) Provide written responses to public comments received on*
8 *the determination of insufficiency prior to making a decision on*
9 *the determination.*

10 *(d) By January 1, 2025, the state board shall review and adopt*
11 *general water quality certifications for general nationwide permits*
12 *issued by the United States Army Corps of Engineers under Section*
13 *404 of the federal Water Pollution Control Act (33 U.S.C. Sec.*
14 *1344) within the state for discharge of dredge and fill material in*
15 *connection with water supply projects and flood risk reduction*
16 *projects. In adopting the general water quality certifications, the*
17 *state board shall rely upon an environmental review completed*
18 *by the United States Army Corps of Engineers under the federal*
19 *National Environmental Policy Act (42 U.S.C. Sec. 4321, et seq.)*
20 *for compliance with its duties under the requirements of Division*
21 *13 (commencing with Section 21000) of the Public Resources*
22 *Code.*

23 *(e) Notwithstanding Section 10231.5 of the Government Code,*
24 *beginning on January 1, 2025, and annually thereafter, the state*
25 *board and regional boards shall prepare, provide public notice*
26 *of, and make available for public review on their internet website,*
27 *and submit to the relevant legislative policy committees and*
28 *relevant legislative budget committees, a report regarding, at a*
29 *minimum, all of the following:*

30 *(1) The water supply projects and flood risk reduction projects*
31 *for which project certifications have been issued.*

32 *(2) The water supply projects and flood risk reduction projects*
33 *for which project certifications have been issued in reliance upon*
34 *avoidance, minimization, and compensatory mitigation created*
35 *and provided through an approved habitat conservation plan,*
36 *natural communities conservation plan, or habitat mitigation plan.*

37 *(3) Any approved habitat conservation plan, natural*
38 *communities conservation plan, or habitat mitigation plan found*
39 *by the state board and regional boards to be insufficient as a*

1 watershed management plan and the reasons for the determination
2 of insufficiency.

3 (4) The general water quality certifications adopted by the state
4 board for general nationwide permits issued by the United States
5 Army Corps of Engineers under Section 404 of the federal Water
6 Pollution Control Act (33 U.S.C. Sec. 1344) to authorize discharges
7 of dredge and fill material in connection with water supply projects
8 and flood risk reduction projects.

9 13389.4. (a) A state agency may do any of the following:

10 (1) Enter into an agreement with a project proponent to recover
11 costs for actions authorized by this section to expedite the review
12 of environmental documents prepared pursuant to Division 13
13 (commencing with Section 21000) of the Public Resources Code,
14 and review the processing and issuance of project certifications,
15 and other authorizations, permits, and approvals for water supply
16 projects and flood risk reduction projects, with the goal of
17 completing permit review and approval in an expeditious manner.

18 (2) Hire or compensate staff or contract for services needed to
19 achieve the goal of completing permit review and approval in an
20 expeditious manner.

21 (3) Work collaboratively with project proponents and other
22 agencies with jurisdiction over the water supply project or flood
23 risk reduction project to implement an integrated regulatory
24 approach in authorizing the projects, similar to efforts implemented
25 by the state permitting agencies for projects funded by the local
26 parcel tax measure, San Francisco Bay Restoration Authority
27 Measure AA, the San Francisco Bay Clean Water, Pollution
28 Prevention and Habitat Restoration Measure.

29 (b) This section does not limit or expand the authority or
30 discretion of a state agency with regard to conducting review of
31 environmental documents under Division 13 (commencing with
32 Section 21000) of the Public Resources Code, processing or issuing
33 a project certification or other permit, approval, or authorization,
34 or imposing conditions in conjunction with the issuance of a project
35 certification or other permit, approval, or authorization.

36 (c) This section does not affect the project proponent's ability
37 to phase the permitting or construction of a water supply project
38 or flood risk reduction project.

39 (d) The Federal Energy Regulatory Commission, the United
40 States Army Corps of Engineers, the United States Fish and

1 *Wildlife Service, the National Marine Fisheries Service, and the*
2 *United States Environmental Protection Agency may, and are*
3 *encouraged to, participate in implementing the integrated*
4 *regulatory approach authorized by this section.*

5 ~~SECTION 1. It is the intent of the Legislature to enact~~
6 ~~subsequent legislation to expedite the regulatory permitting process~~
7 ~~for water supply and flood risk reduction projects, consistent with~~
8 ~~“California’s Water Supply Strategy, Adapting to a Hotter, Drier~~
9 ~~Future,” released by Governor Newsom’s administration in August~~
10 ~~2022.~~

Introduced by Senator DoddFebruary 8, 2023

An act to add Sections 145, 145.1, and 145.2 to the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 361, as introduced, Dodd. Water resources: stream gages.

Existing law, the Open and Transparent Water Data Act, requires the Department of Water Resources, the State Water Resources Control Board, and the Department of Fish and Wildlife to coordinate and integrate existing water and ecological data from local, state, and federal agencies. Existing law requires the Department of Water Resources and the board, upon an appropriation of funds by the Legislature, to develop a plan to deploy a network of stream gages that includes a determination of funding needs and opportunities for modernizing and reactivating existing gages and deploying new gages, as specified. Existing law requires the department and the board, in consultation with the Department of Fish and Wildlife, the Department of Conservation, the Central Valley Flood Protection Board, interested stakeholders, and, to the extent they wish to consult, local agencies, to develop the plan to address significant gaps in information necessary for water management and the conservation of freshwater species.

This bill would require the Department of Water Resources and the board, upon appropriation of funds by the Legislature, to reactivate, upgrade, and install new stream gages, as provided. The bill would require the department and board to use the recommendations and data provided in the California Stream Gaging Prioritization Plan 2022 to complete specified actions by 2030. The bill would require the data from all stream gages operating with any public money to be published

as provisional data within 10 days of collection and made publicly available on the state’s open water data platforms. The bill would require the department and board to develop and adopt a set of standards and processes for assessing, tracking, and reporting the accuracy of stream gages, evapotranspiration data, water meters, and other critical data inputs for water management, as provided. The bill would require the department and the board to consult with interested stakeholders to develop a plan to identify the gaps in the network of automated weather stations and eddy covariance towers to ensure accurate and comprehensive data collection.

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. The Legislature finds and declares all of the
2 following:
- 3 (a) More than 3,200 local watersheds in California (over 70
4 percent) do not have any history of stream gaging, and another 15
5 percent do not have active, publicly accessible gages today.
- 6 (b) Most watersheds in California also do not have the
7 infrastructure needed for accurate water accounting or the ability
8 to track in near real-time water and groundwater budgets,
9 streamflows, and net changes in the water balance over time.
- 10 (c) California’s current water data infrastructure is poorly
11 funded.
- 12 (d) Of the 1,076 active gages in California, less than one-half
13 provide data on key metrics for water management such as
14 temperature, 45 percent, and sedimentation, 40 percent.
- 15 (e) The lack of sustained funding for gage operation and
16 maintenance is the primary source of gages going offline.
- 17 (f) The United States Geological Survey (USGS) operates 60
18 percent of the active gages in California. Most state-operated gages
19 are funded by the Division of Flood Management and the State
20 Water Project.
- 21 (g) The Department of Water Resources, State Water Resources
22 Control Board, Department of Fish and Wildlife, and California
23 Geological Survey, Department of Conservation recently completed
24 a draft report entitled “California Stream Gaging Prioritization

1 Plan 2022” with specific recommendations and locations to
2 improve California’s stream gage network.

3 (h) A robust and reliable stream gage network, California
4 Irrigation Management Information System network, and more
5 accurate understanding of diversions and consumptive use can
6 help state, federal, and local agencies better understand the
7 movement of water within and out of a watershed, and manage
8 water resources more effectively for multiple benefits and to help
9 avoid conflicts.

10 (i) Currently, there is a lack of transparency, consistency, and
11 access associated with the quality and accuracy of various sources
12 of water data. These issues make it more difficult, time consuming,
13 and costly for the state and water managers to appropriately plan
14 for and mitigate water management, economic, climate change,
15 ecological, and other uncertainties.

16 (j) The accuracy of gage and other data for water management
17 needs to be assessed and recorded in a consistent and transparent
18 way.

19 SEC. 2. Section 145 is added to the Water Code, to read:

20 145. (a) Upon appropriation of funds by the Legislature for
21 the purposes of this section, the department and the board shall
22 reactivate, upgrade, and install new stream gages where lack of
23 data contributes to conflicts in water management or where water
24 can be more effectively managed for multiple benefits, including,
25 but not limited to, the following benefits:

- 26 (1) Water supply management.
- 27 (2) Flood management.
- 28 (3) Water quality management.
- 29 (4) Ecosystem management.

30 (b) The department and the board shall use the recommendations
31 and data provided in the California Stream Gaging Prioritization
32 Plan 2022 (the plan) to complete the following actions by 2030:

- 33 (1) Reactivate and maintain at least 161 historical stream gages.
- 34 (2) Upgrade at least 48 stream gages to collect additional
35 streamflow data with the installation of additional sensors, such
36 as temperature and dissolved oxygen sensors, equipped for
37 telemetry, namely recording and transmitting of data without
38 in-person effort, or at which a flow rating curve to convert stage
39 to flow could be added.

- 40 (3) Add temperature sensors to at least 536 active stream gages.

1 (4) Install new stream gages in at least 432 watersheds.

2 (5) Improve gage quality and management by establishing
3 minimum operation and maintenance standards.

4 (6) Develop gage data standards to support accessibility and
5 interoperability, such that data from all sources can be housed,
6 analyzed, and shared on a common interface.

7 (c) The department and the board, in consultation with the
8 Department of Fish and Wildlife, the Department of Conservation,
9 the Central Valley Flood Protection Board, interested stakeholders,
10 and, to the extent they wish to consult, local agencies, shall develop
11 the plan to fund the long-term maintenance of these stream gages
12 and data management tools based on the funding recommendations
13 in the plan and other considerations.

14 (d) The department and the board shall require that the data
15 from all stream gages operating with any public money be
16 published as provisional data within 10 days of collection and
17 made publicly available on the state’s open water data platforms
18 and consistent with data sharing protocols in the Open and
19 Transparent Water Data Act (Part 4.9 (commencing with Section
20 12400) of Division 6). The department and the board shall establish
21 a process to finalize and update the data.

22 SEC. 3. Section 145.1 is added to the Water Code, to read:

23 145.1. The department and the board, in consultation with the
24 California Water Data Consortium or some equivalent entity, and
25 consistent with existing state efforts, shall develop and adopt a set
26 of standards and processes for assessing, tracking, and reporting
27 the accuracy of stream gages, evapotranspiration data, water meters,
28 and other critical data inputs for water management.

29 SEC. 4. Section 145.2 is added to the Water Code, to read:

30 145.2. The department and the board shall consult with
31 interested stakeholders to develop a plan to identify the gaps in
32 the network of automated weather stations and eddy covariance
33 towers to ensure accurate and comprehensive data collection to
34 support and validate methods to estimate other key elements to
35 the water budget, including evapotranspiration.