



MEMORANDUM

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

FROM: Scott Petersen, Water Policy Director

DATE: February 7, 2022

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 legislation:

- Adopt a position of “Support” on proposed legislation to expedite certain water right permit applications

Summary

Anticipated State Legislation: Expediting State Water Resources Control Board Consideration of Applications to Appropriate Water During High-Flow Events and to Support Groundwater Recharge Projects

RECOMMENDATION: SUPPORT

OBJECTIVE: To enable a Groundwater Sustainability Agency to submit an application, for the State Water Board’s consideration, that seeks to appropriate excess surface water during wet periods, for storage in a groundwater basin, to be subsequently used through the implementation of the Groundwater Sustainability Plan

Summary

This legislation would amend Section 1206 of the California Water Code to include a third exception that allows the State Water Board to consider a permit application to capture excess flows on fully appropriated streams, subject to the following conditions:

- (1) That the diversions would occur during high flows when (a) Flow in the stream system exceeds the claims of all known legal users who divert water downstream of the proposed point of diversion(s), (b) Unregulated flow in the stream system will be sufficient below the proposed point of diversion(s) to meet instream flow requirements and water quality objectives, and (c)



Streamflow at the point of diversion is above the 80th percentile, calculated on a daily basis from the gage data during the period-of-record.

- (2) Additionally, the water right application is submitted by a Groundwater Sustainability Agency, as that term is defined in Section 10721, and for the purpose of assisting with implementation of its Groundwater Sustainability Plan, adopted pursuant to Part 2.74 of Division 6.

Status

This legislation is anticipated to be introduced before the bill filing deadline on February 18, 2022.

Importance to the Authority

This bill would help Groundwater Sustainability Agencies throughout the State implement their Groundwater Sustainability Plans by allowing them to apply for a water rights for excess flows on fully appropriated streams without opening the fully appropriated stream designation. This could provide another tool to facilitate member agencies to successfully implement SGMA with reduced impacts.

Pros:

- The bill would facilitate increase the opportunities for groundwater recharge projects to utilize excess flows on fully appropriated streams.
- Protects downstream water users and environmental uses

Cons:

- None identified.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to this legislation when introduced in a substantially similar form.

Fiscal Impact: Unknown. Reduce costs associated SGMA implementation.

Business Analysis: Reduce costs associated with SGMA implementation.

Option 2

Take no action.

Fiscal Impact: Unknown. Member agencies may be excluded from making an application to capture excess flows on these streams or may be subject through higher costs by requiring the board to reconsider the fully appropriated stream designation or through SGMA implementation.

Business Analysis: Member agencies may be excluded from making an application to capture excess flows on these streams or may be subject through higher costs by requiring the board to reconsider the fully appropriated stream designation or through SGMA implementation.

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 8, dated December 9, 2021, the Board adopted the Fiscal Year 2023 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 testifies and advocates 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 delegatee 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.

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.



Tracked Legislation

Federal Legislation

Bill Number(s)	Sponsor(s)	Bill Title	Summary	Position	Status
H.R. 2552/S. 1179	Costa (D-CA-16)/Feinstein (D-CA)	Canal Conveyance Capacity Restoration Act	This bill authorizes the Bureau of Reclamation to provide financial assistance for various projects in California to mitigate the sinking or settling of the ground (i.e., subsidence mitigation), specifically for projects related to the Friant-Kern Canal, the Delta-Mendota Canal, and certain parts of the San Luis Canal/California Aqueduct.	Support	Introduced and referred to the House Committee on Natural Resources and Senate Committee on Energy and Natural Resources (4/15/2021)
H.R. 644	Calvert (R-CA-42)	REBUILD Act	<p>This bill authorizes (1) the assignment to states of federal environmental review responsibilities under relevant federal environmental laws for projects funded by, carried out by, or subject to approval by federal agencies; and (2) states to assume all or part of those responsibilities.</p> <p>Each responsible federal official who is authorized to assign such responsibility must promulgate regulations that establish requirements relating to information required to be contained in state applications to assume those responsibilities.</p> <p>An official may approve an application only if (1) public notice requirements have been met, (2) the state has the capability to assume the responsibilities, and (3) the head of the state agency having primary jurisdiction over the projects enters into a written agreement with an official to assume the responsibilities and to maintain the financial resources necessary to carry them out.</p>	Support	Introduced and referred to the House Committee on Natural Resources (2/1/2021)



				<p>The officials must audit state compliance with federal laws for which responsibilities are assumed. The officials may terminate the responsibilities assigned to states after providing notice to states of any noncompliance and an opportunity to take corrective action.</p>		
H.R. 737	Valadao (R-CA-21)	RENEW WIIN Act		<p>The bill would extend the authorities under the Water Infrastructure Improvements for the Nation Act of 2016 for 10 years, providing operational flexibility, drought relief, and other benefits to the State of California.</p>	Support	<p>Introduced and referred to the House Committee on Natural Resources (2/2/2021)</p>
H.R. 866	Calvert (R-CA-42)	FISH Act		<p>This bill gives the Fish and Wildlife Service (FWS) the sole authority to protect endangered or threatened species that are anadromous species (species of fish that spawn in fresh or estuarine waters and that migrate to ocean waters) or catadromous species (species of fish that spawn in ocean waters and migrate to fresh waters). Currently, the FWS shares this authority with the National Marine Fisheries Service.</p>	Support	<p>Introduced and referred to the House Subcommittee on Water, Oceans, and Wildlife (3/3/2021)</p>
H.R. 1563	Garcia (R-CA-25)	To extend the authorities under the WIIN Act of 2016.		<p>This bill extends the authority of certain federal agencies to provide support for western water infrastructure and extends consultation requirements concerning projects in California.</p> <p>Specifically, the bill extends through 2028 the authority of the Bureau of Reclamation to provide support for projects in certain western states related to federal or state-led water storage, water desalination, and water recycling and reuse. It also extends provisions specific to California, including drought relief and the operations of the Central Valley Project (a hydropower and water management project in California that is operated by Reclamation).</p>	Support	<p>Introduced and referred to the House Natural Resources and Science, Space and Technology Committees (3/3/2021)</p>



			Further, the bill extends through 2033 consultation requirements concerning biological assessments and the coordinated operations of the Central Valley Project and the State Water Project in California.		
S. 29	Klobuchar (D-MN)	Local Water Protection Act	This bill reauthorizes through FY2025 programs within the Environmental Protection Agency that award grants to states for managing nonpoint source water pollution or protecting groundwater quality. Water pollution from nonpoint sources is caused by precipitation picking up pollution as it moves over or through the ground.	Support	Introduced and referred to the Committee on Environment and Public Works. (1/22/2021)
S. 914	Duckworth (D-IL)	Drinking Water and Wastewater Infrastructure Act of 2021	This bill reauthorizes through FY2026 or establishes a variety of programs for water infrastructure. Specifically, it supports programs to provide safe drinking water or treat wastewater, such as sewer overflows or stormwater. For example, the bill reauthorizes and revises the clean water state revolving fund (SRF) and the drinking water SRF.	Support	Passed Senate 89-2 (4/29/2021)
S. 2185	Barrasso (R-WY)	Western Water Infrastructure Act of 2021	This bill reauthorizes the Water Infrastructure Improvements for the Nation (WIIN) Act funding accounts; authorizes funding to eliminate Reclamation's maintenance backlog; and restores storage capacity at Reclamation and U.S. Army Corp of Engineers (USACOE) facilities through a sediment management program.	Support and amend	Introduced and referred to the Committee on Energy and Natural Resources (6/23/2021)

State Legislation

Bill Number(s)	Sponsor(s)	Bill Title	Summary	Position	Status
SB 559	Hurtado	Department of Water Resources: water conveyance systems:	This bill would establish the Canal Conveyance Capacity Restoration Fund in the State Treasury to be administered by the department. The bill would require all moneys deposited in the fund to be expended, upon appropriation by the Legislature, in support of subsidence repair costs, including environmental planning,	Support	Amended in Assembly Appropriations on 8/30/21. Moved to inactive file on 9/8/21.



		Canal Conveyance Capacity Restoration Fund.	<p>permitting, design, and construction and necessary road and bridge upgrades required to accommodate capacity improvements. The bill would require the department to expend from the fund, upon appropriation by the Legislature, specified monetary amounts to restore the capacity of 4 specified water conveyance systems, as prescribed, with 2 of those 4 expenditures being in the form of a grant to the Friant Water Authority and to the San Luis and Delta-Mendota Water Authority. The bill would make these provisions inoperative on July 1, 2030, and would repeal the provisions as of January 1, 2031.</p>		
AB 252	Rivas	Multibenefit Land Repurposing Incentive Program: administration.	<p>Establishes the Multibenefit Land Conversion Incentive Program (MLCIP) at the Department of Conservation (DOC).</p> <p>Major Provisions</p> <ol style="list-style-type: none"> 1) Requires DOC to develop guidelines to implement the program and exercise its expertise and discretion when awarding program funds to eligible applicants. 2) Specifies compliance and eligibility criteria with the Sustainable Groundwater Management Act (SGMA). <ol style="list-style-type: none"> a. Permits the DOC to award funds to eligible local program agencies. b. Eligible agencies include a groundwater sustainability agency (GSA), county, NGO, as well as a local agency or mutual water company designated by a GSA or county. c. Funds are awarded to local agencies regarding a basin/basins designated by the Department of Water Resources 	Support	<p>Included in AB 170 (Resources Trailer bill) at \$50 million.</p> <p>Moved to Inactive file on 9/7/21.</p>



			<p>(DWR) as critically overdrafted, and is managed by one or more GSAs.</p> <p>d. Eligible applicants demonstrate local program matching funds of no less than 50%.</p> <p>3) Provides incentive payments must be awarded for the purposes of:</p> <ul style="list-style-type: none"> a. Habitat restoration or maintenance. b. Conversion of rangelands. c. Multibenefit groundwater recharge facility construction. d. Floodplain restoration e. Cover crop planting f. Dust control measures. g. Community recreation or park areas. <p>4) Prioritizes funding for land with severely poor soil quality, high habitat value, or the best aquifer recharge, community recreational, local water supply enhancement, flood prevention, or wildlife connectivity potential.</p> <p>5) Sunsets MLCIP on January 1, 2032.</p>		
AB 350	Villapudua	Cannella Environmental Farming Act of 1995: technical assistance grant program: groundwater conservation planning.	This bill would require, upon appropriation of funds, the California Department of Food and Agriculture (CDFA) to establish and administer a 3-year grant program to fund technical assistance to support landowners located in a critically overdrafted basin, as defined, in reaching water use reduction goals established pursuant to the Sustainable Groundwater Management Act.	Support	Amended in Senate Appropriations (8/26/21). Moved to Inactive File on 9/2/21.



<p>AB 377</p>	<p>Rivas</p>	<p>Water quality: impaired waters.</p>	<p>This bill requires the State Water Resources Control Board (State Water Board) and regional boards, by January 1, 2025, to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. This bill requires the plan to include total maximum daily load (tmdl) compliance schedules as they existed on January 1, 2021, and prohibits the report from extending the existing compliance schedules. The report is required to be updated with progress summaries every five years until January 1, 2050.</p>	<p>Oppose</p>	<p>Died. Failed to meet house of origin requirements.</p>
<p>AB 979</p>	<p>Frazier</p>	<p>Sacramento-San Joaquin Delta: projects: sea level rise analysis report</p>	<p>This bill requires any individual or entity undertaking a project in the Sacramento-San Joaquin Delta (Delta) to complete a report(Report)analyzing the impact of current sea-level rise projections on the project. Specifically, this bill:</p> <ol style="list-style-type: none"> 1) Requires the Report to analyze different scenarios contained in the Ocean Protection Council’s (OPC) Sea-Level Rise Guidance 2018 Update document (Guidance Document). Allows more probable or more severe sea level rise scenarios to be included in the Report. 2) Requires the Report to be submitted to the Delta Stewardship Council (DSC), Delta Protection Commission (DPC) and the Legislature. Requires DSC and DPC to post the report on their internet websites. 3) Specifies the definition of “project” is the same as used in the California Environmental Quality Act (CEQA) as well as that nothing in the bill abridges any law, including the Delta Protection Act. 	<p>Oppose</p>	<p>Died. Failed to meet house of origin requirements.</p>

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

- (a) It is the intent of the Legislature in enacting this measure to expedite the State Water Resources Control Board consideration of applications for water right permits during times of high-flow events and to support groundwater recharge projects to assist in providing a more reliable water supply for the state.

SECTION 2. Section 1206 of the Water Code is amended to read:

1206(a) From and after the date of adoption of a declaration that a stream system is fully appropriated, and subject to subdivision (b), the board shall not accept for filing any application for a permit to appropriate water from the stream system described in that declaration, and the board may cancel any application pending on that date.

(b) Notwithstanding subdivision (a), the board may provide, in any declaration that a stream system is fully appropriated, for acceptance for filing of applications to appropriate water under specified conditions. Any provision to that effect shall specify the conditions and may contain application limitations, including, but not limited to, limitations on the purpose of use, on the instantaneous rate of diversion, on the season of diversion, and on the amount of water which may be diverted annually. The board may make those limitations applicable to individual applications to appropriate water, or to the aggregate of the applications, or to both.

(c) Subdivision (a) shall not apply (i) to applications for temporary permits made pursuant to Chapter 6.5 (commencing with Section 1425), (ii) to any provision of this code respecting change in point of diversion, place of use, or purpose of use, or (ii) to applications for permits made pursuant to Chapter 2 (commencing with Section 1250), provided:

(1) Diversions would occur during high flows when –

(A) Flow in the stream system exceeds the claims of all known legal users who divert water downstream of the proposed point of diversion(s);

(B) Unregulated flow in the stream system will be sufficient below the proposed point of diversion(s) to meet instream flow requirements and water quality objectives;

(C) Streamflow at the point of diversion is above the 80th percentile, calculated on a daily basis from the gage data during the period-of-record; and

(2) The application is submitted by a Groundwater Sustainability Agency, as that term is defined in Section 10721, and for the purpose of assisting with implementation of its Groundwater Sustainability Plan, adopted pursuant to Part 2.74 of Division 6.