



- Board of Directors
Communications and Legislation Committee

4/9/2019 Board Meeting

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Subject

Express support, if amended, for AB 658 (E. Garcia, D-Coachella): Water Rights: Water Management; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

AB 658 would allow a groundwater sustainability agency or local agency to apply for, and the State Water Resources Control Board to issue, a conditional temporary permit or a temporary change to an existing water right for diversion of surface water to underground storage for beneficial uses that advance the sustainability goal as defined in the Sustainable Groundwater Management Act (SGMA). Staff recommends supporting AB 658 if amended to ensure that existing water rights are not enlarged or otherwise altered through the temporary change process.

Details

Background

AB 658 (**Attachment 1**) authored by Assembly Member Arambula (D-Fresno), but transferred to Assembly Member Eduardo Garcia, is intended to facilitate groundwater recharge projects during high flow events by creating a five-year permit administered by the State Water Resources Control Board (SWRCB) and by allowing for a temporary urgent change to a water right. A second bill, AB 441 (Eggman, D-Stockton) would amend Water Code Section 1242 to make groundwater storage a reasonable and beneficial use, thereby allowing an opportunity for water rights to be expanded beyond their original beneficial uses. Assembly Member Eggman tried but failed to advance similar groundwater recharge legislation with AB 647 and AB 1427 during the 2015-16 and 2017-18 legislative sessions. The Eggman bill does not include sufficient safeguards to ensure that permanent underground storage would not adversely affect downstream water right holders and other beneficial uses, including fish and wildlife and recreation, by allowing an expansion of the use of existing water rights. Existing law allows for surface water to be diverted to groundwater storage if it is later extracted for a beneficial use for which it was stored. AB 658 is an alternative approach to AB 441 that encourages surface water diversion to groundwater storage without amending existing water law principles, and in a way that will benefit water managers while protecting existing water rights holders and other beneficial uses.

Summary of AB 658

AB 658 would allow local agencies or groundwater sustainability agencies to apply for a conditional temporary permit to divert surface water to underground storage in an expedited manner during times of high flood flows or upon demonstration of sufficient unappropriated water, and if certain conditions are met. Those conditions include protection of other legal users of water and without unreasonable effects on fish and wildlife, or the ability of existing water right holders to meet water quality objectives.

AB 658 also allows local agencies or groundwater sustainability agencies to apply for a temporary five-year change to their existing water rights to divert surface water to underground storage for beneficial uses that advances the sustainability goal of a groundwater basin, as defined in Water Code Section 10720 et seq., if similar conditions as those required under the conditional temporary permit are met.

For both the temporary permit and the temporary change to water rights, AB 658 provides a process for water users potentially impacted to receive notice and file an objection in advance of the issuance of any new temporary conditional permit. AB 658 also requires the SWRCB to consider an objection and whether or not to hold a hearing before acting on the application for a permit or change.

Potential Impacts on Metropolitan

Currently, any water user can apply for a groundwater supplement and put surface water into storage. In the past, the SWRCB required accounting that could prove difficult. However, under SGMA, there are accounting methodologies required that would track surface water diverted to groundwater storage, eliminating the prior accounting concerns. While AB 658 provides some protection for existing water rights, including the State Water Project water rights held by the Department of Water Resources, it requires further clarification to protect water users from potentially expanding existing water rights through the temporary urgency change petition process.

Staff has been working with an ACWA workgroup and the SWRCB to develop language that would support groundwater recharge while still protecting existing water rights, including the State Water Project water rights. With the proposed amendments, this bill would accomplish groundwater recharge without amending Water Code Section 1242 in a way that could expand existing water rights and harm other water right holders, fish, and wildlife, or water quality objectives.

Recommendation

Staff recommends Metropolitan take a support if amended position, proposing amendments to provide clear protections for existing beneficial uses including instream flows for fish and wildlife and the ability to meet water quality objectives, and provide protection from expanding existing water rights through the temporary change petition process.

Policy

By Minute Item 51418, dated December 11, 2018, the Board adopted the State Legislative Priorities and Principles for 2019, including development of important safeguards to ensure permanent underground storage is implemented in a way that protects existing water users and environment

By Minute Item 46637, dated April 11, 2006, the Board adopted Policy Principles on Long-Term Sustainability in the Delta

By Minute Item 41222, dated January 10, 1995, the Board adopted Groundwater Management Policy Principles
Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves legislative proposals that do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Public Resources Code Sections 21065, 21083 and Section 15378(b)(1) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required.

Board Options

Option #1

Authorize the General Manager to express support, if amended, for AB 658: Water Rights: Water Management.

Fiscal Impact: None.

Business Analysis: Allows expedited permitting to divert surface water in high flow periods for underground storage to assist Groundwater Sustainability Agencies to balance their groundwater basins to comply with the sustainability goal.

Option #2

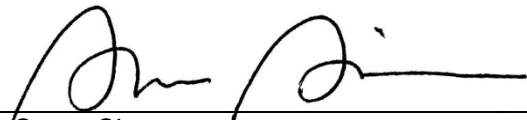
Take no action.

Fiscal Impact: None.

Business Analysis: This issue has been the subject of proposed legislation for many years and if AB 658 is not passed there will likely be additional legislation that is less protective of Metropolitan's interests and could reduce State Water Project water supplies.

Staff Recommendation

Option #1



Susan Sims
External Affairs, Manager

4/4/2019

Date



Jeffrey Lightinger
General Manager

4/4/2019

Date

Attachment 1 – Assembly Bill 658, as amended 04/02/2019

Ref# ea12666445

AMENDED IN ASSEMBLY APRIL 2, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 658

Introduced by Assembly Member Eduardo Garcia

February 15, 2019

An act to amend Sections ~~1242, 1345~~, 1348, 1425, 1430, 1431, 1435, 1440, 1441, 1442, and 1704.4 of, to amend the heading of Chapter 6.6 (commencing with Section 1435) of Part 2 of Division 2 of, to add the heading of Article 1 (commencing with Section 1425) to Chapter 6.5 of Part 2 of Division 2 of, to add the heading of Article 1 (commencing with Section 1435) to Chapter 6.6 of Part 2 of Division 2 of, to add Article 2 (commencing with Section 1433) to Chapter 6.5 of Part 2 of Division 2 of, and to add Article 2 (commencing with Section 1443) to Chapter 6.6 of Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 658, as amended, Eduardo Garcia. Water rights: water management.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the board grants permits and licenses to appropriate water. Existing law allows a person who has an urgent need to divert and use water to apply for, and the board to issue, a temporary permit, as prescribed. Existing law requires an applicant to pay an application fee and a permit fee, if a temporary permit is issued, both computed as specified.

Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a

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groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified. Existing law requires a groundwater sustainability plan to be developed and implemented to meet the sustainability goal, established as prescribed.

This bill would authorize a groundwater sustainability agency or local agency to apply for, and the board to issue, a conditional temporary permit for diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin, as specified.

Existing law allows a permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use to petition for, and the board to issue, a temporary change order, subject to certain restrictions.

This bill would authorize a groundwater sustainability agency or local agency to petition for, and the board to issue, a conditional temporary change order that authorizes the diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin, as specified.

~~The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented. Under existing law, the right to water or to the use of water is limited to that amount of water that may be reasonably required for the beneficial use to be served. Existing law provides for the reversion of water rights to which a person is entitled when the person fails to beneficially use the water for a period of 5 years. Existing law provides that the storing of water underground, including the diversion of streams and the flowing of water on lands necessary to the accomplishment of the storage, constitutes a beneficial use of water if the stored water is thereafter applied to the beneficial purposes for which the appropriation for storage was made.~~

~~This bill would instead provide that, consistent with the applicable permit or license, any diversion of water to underground storage constitutes a diversion of water for beneficial use if the diverted water is put to beneficial use, as specified.~~

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 1242 of the Water Code is amended to~~
2 ~~read:~~

3 ~~1242. Consistent with the applicable permit or license, any~~
4 ~~diversion of water to underground storage, including the diversion~~
5 ~~of water for groundwater recharge, constitutes a diversion of water~~
6 ~~for beneficial use if the diverted water is put to beneficial use~~
7 ~~consistent with this division. The beneficial use of water diverted~~
8 ~~to underground storage is not limited to uses requiring subsequent~~
9 ~~extraction or release of the stored water and may include beneficial~~
10 ~~uses such as protection of water quality made while the water is~~
11 ~~in underground storage. The forfeiture periods in Sections 1240~~
12 ~~and 1241 do not include any period when the water is being used~~
13 ~~in the aquifer or storage area or is being held in underground~~
14 ~~storage for later application to beneficial use.~~

15 *SECTION 1. It is the intent of the Legislature in enacting this*
16 *measure to encourage groundwater recharge projects during times*
17 *of high-flow events by creating a temporary five-year permit and*
18 *a temporary five-year change order administered by the State*
19 *Water Resources Control Board. This measure is not intended to*
20 *limit any other permitting of an appropriation of water for any*
21 *authorized beneficial use under other provisions of law.*

22 *SEC. 2. Section 1345 of the Water Code is amended to read:*

23 ~~1345. The~~(a) *Except as provided in subdivision (b), the*
24 *Division of Water Rights shall conduct a field investigation of all*
25 *minor protested applications. The board shall notify the parties of*
26 *the field investigation not less than 20 days prior to conducting*
27 *the field investigation, to enable the parties to attend and present*
28 *information to the board.*

29 *(b) The Division of Water Rights is not required to conduct a*
30 *field investigation for an application defined as a minor application*
31 *under subdivision (b) of Section 1348 if the Division of Water*
32 *Rights determines, in its discretion, that a field investigation will*
33 *not substantially expedite consideration of the application and a*
34 *hearing should be conducted under Section 183. If the Division of*

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1 *Water Rights makes that determination, Sections 1346 and 1347*
2 *do not apply to the application.*

3 ~~SEC. 2.~~

4 *SEC. 3.* Section 1348 of the Water Code is amended to read:

5 1348. For purposes of this article, a minor application shall
6 mean either of the following:

7 (a) Any application which does not involve direct diversions in
8 excess of three cubic-feet per second or storage in excess of 200
9 acre-feet per year.

10 (b) An application by a groundwater sustainability agency or
11 local agency, as defined in Section 10721, for a diversion
12 previously authorized by a temporary permit under Article 2
13 (commencing with Section 1433) of Chapter ~~6.5~~ and that the
14 ~~Division of Water Rights has determined, in its discretion, that~~
15 ~~data available from a field investigation and operation under the~~
16 ~~temporary permit is sufficient to issue a decision.~~ 6.5.

17 ~~SEC. 3.~~

18 *SEC. 4.* The heading of Article 1 (commencing with Section
19 1425) is added to Chapter 6.5 of Part 2 of Division 2 of the Water
20 Code, to read:

21

22 Article 1. Temporary Urgency Permits

23

24 ~~SEC. 4.~~

25 *SEC. 5.* Section 1425 of the Water Code is amended to read:

26 1425. (a) Any person, whether or not an applicant, permittee,
27 or licensee under provisions of this division other than this article,
28 who has an urgent need to divert and use water may apply for, and
29 the board may issue, a conditional, temporary permit without
30 complying with other procedures or provisions of this division,
31 but subject to all requirements of this article.

32 (b) Prior to issuing a permit pursuant to this article, the board
33 shall make all of the following findings:

34 (1) The applicant has an urgent need for the water proposed to
35 be diverted and used.

36 (2) The water may be diverted and used without injury to any
37 lawful user of water.

38 (3) The water may be diverted and used without unreasonable
39 effect upon fish, wildlife, or other instream beneficial uses.

1 (4) The proposed diversion and use are in the public interest,
2 including findings to support permit conditions imposed to ensure
3 that the water is diverted and used in the public interest, without
4 injury to any lawful user of water, and without unreasonable effect
5 upon fish, wildlife, and other instream beneficial uses.

6 (c) “Urgent need,” for the purposes of this article, means the
7 existence of circumstances from which the board may in its
8 judgment conclude that the proposed temporary diversion and use
9 is necessary to further the constitutional policy that the water
10 resources of the state be put to beneficial use to the fullest extent
11 of which they are capable and that waste of water be prevented;
12 except that the board shall not find an applicant’s need to be urgent
13 if the board in its judgment concludes, if applicable, that the
14 applicant has not exercised due diligence either (1) in making
15 application for a permit pursuant to provisions of this division
16 other than this article, or (2) in pursuing that application to permit.

17 (d) The board may delegate to any officer or employee of the
18 board all or any of its functions under this article, as provided in
19 Section 7.

20 ~~SEC. 5:~~

21 *SEC. 6.* Section 1430 of the Water Code is amended to read:

22 1430. A temporary permit issued under this article shall not
23 result in the creation of a vested right, even of a temporary nature,
24 but shall be subject at all times to modification or revocation in
25 the discretion of the board. The authorization to divert and use
26 water under a temporary permit shall automatically expire 180
27 days after the authorization takes effect, unless an earlier date is
28 specified or the temporary permit is revoked. The 180-day period
29 does not include any time required for monitoring, reporting, or
30 mitigation before or after the authorization to divert or use water
31 under the temporary permit. If the temporary permit authorizes
32 diversion to storage, the 180-day period is a limitation on the
33 authorization to divert and not a limitation on the authorization
34 for beneficial use of water diverted to storage.

35 ~~SEC. 6:~~

36 *SEC. 7.* Section 1431 of the Water Code is amended to read:

37 1431. A temporary permit issued under this article may be
38 renewed by the board. Requests for renewals shall be processed
39 in the manner provided by this article, except that the permittee
40 shall not be required to file duplicate maps, drawings, or other data

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1 if they were furnished with the original application. Each such
2 renewal shall be valid for a period not to exceed 180 days from
3 the date of renewal.

4 ~~SEC. 7.~~

5 *SEC. 8.* Article 2 (commencing with Section 1433) is added
6 to Chapter 6.5 of Part 2 of Division 2 of the Water Code, to read:

7

8 Article 2. Temporary Permits for Diversion to Underground
9 Storage

10

11 1433. (a) Unless the context otherwise requires, the following
12 *definitions* govern the construction of this article:

13 (a) ~~“Beneficial use” includes, but is not limited to, the following:~~

14 (1) ~~Prevention of significant and unreasonable seawater~~
15 ~~intrusion.~~

16 (2) ~~Prevention of significant and unreasonable degradation of~~
17 ~~water quality, including the migration of contaminant plumes that~~
18 ~~impair water supplies.~~

19 (3) ~~Prevention of significant and unreasonable land subsidence~~
20 ~~that substantially interferes with surface land uses.~~

21 (4) ~~Maintenance or enhancement of groundwater dependent~~
22 ~~ecosystems.~~

23 (5) ~~Beneficial uses that require the extraction of stored water.~~

24 (b)

25 (1) “Local agency” has the same meaning as defined in Section
26 10721.

27 (e)

28 (2) “Groundwater sustainability agency” has the same meaning
29 as defined in Section 10721.

30 (b) *This article shall not apply to diversions within the*
31 *groundwater basins identified in paragraph (24) of subdivision*
32 *(a) of, or subdivision (c) of, Section 10720.8.*

33 1433.1. (a) A groundwater sustainability agency or a local
34 agency, whether or not an applicant, permittee, or licensee under
35 provisions of this division other than this article, may apply for,
36 and the board may issue, a conditional temporary permit for
37 diversion of surface water to underground storage for beneficial
38 use that advances the sustainability goal of a groundwater basin
39 under Part 2.74 (commencing with Section 10720) of Division 6,
40 without complying with other procedures or provisions of this

1 division, subject to all requirements of this article. *An application*
2 *may be filed under this article whether or not there is an adopted*
3 *groundwater sustainability plan, an interim plan, or an alternative*
4 *under Section 10733.6 for the basin.*

5 (b) Before issuing a permit pursuant to this article, the board
6 shall make all of the following findings based upon a
7 preponderance of the evidence:

8 (1) The proposed diversion is to underground storage for
9 beneficial use ~~that advances the sustainability goal of a~~
10 ~~groundwater basin.~~ *consistent with subdivision (a).*

11 (2) The water may be diverted and used without injury to any
12 lawful user of water. This finding may be satisfied by
13 demonstrating both of the following:

14 (A) The proposed diversion to underground storage will occur
15 only when ~~flows both of the following conditions are satisfied:~~

16 (i) ~~Flow in the source waterbody exceed exceeds~~ the claims of
17 all known legal users who divert water downstream of the proposed
18 point of diversion.

19 (ii) *Unregulated flow in the source waterbody will be sufficient*
20 *below the proposed point of diversion to meet instream flow*
21 *requirements and water quality objectives.*

22 (B) ~~Storage~~ *To prevent injury to existing legal users of water,*
23 *storage and extraction from storage in the basin under the proposed*
24 *permit will be subject to accounting methods and reporting*
25 *requirements established by a any of the following:*

26 (i) ~~A groundwater sustainability plan, interim plan, or alternative~~
27 ~~plan.~~

28 (ii) *An interim plan.*

29 (iii) ~~An alternative approved pursuant to Section 10733.6 that~~
30 ~~the board finds adequate to prevent injury to any lawful user of~~
31 ~~water. 10733.6.~~

32 (iv) *The board, in applying conditions to the permit.*

33 (3) The water may be diverted and used without unreasonable
34 effect upon fish, wildlife, or other instream beneficial ~~uses.~~ *uses*
35 *or on the ability to meet water quality objectives. If the permit does*
36 *not include a condition proposed by the Department of Fish and*
37 *Wildlife under paragraph (2) of subdivision (c) of Section 1433.2,*
38 *the board shall include in the findings an explanation of why the*
39 *condition is not included.*

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1 (4) The proposed diversion and use are in the public interest,
2 including findings to support permit conditions imposed to ensure
3 that the water is diverted and used in the public interest, ~~without~~
4 ~~injury to any lawful user of water, and without unreasonable effect~~
5 ~~upon fish, wildlife, and other instream beneficial uses.~~ *interest.*

6 (c) The board may delegate to any officer or employee of the
7 board all or any of its functions under this article, as provided in
8 Section 7.

9 1433.2. (a) The application for a temporary permit shall be
10 completed in accordance with Section 1260 and shall be
11 accompanied by any maps, drawings, and other data that may be
12 required by the board.

13 (b) (1) An applicant shall pay an application fee and, if a permit
14 is issued, a permit fee, both in amounts calculated in accordance
15 with the provisions of Chapter 8 (commencing with Section 1525).

16 (2) *Consistent with Section 3 of Article XIII A of the California*
17 *Constitution and the board's authority to set fees to promote the*
18 *conservation and utilization of water resources in the public*
19 *interest, the board may adopt reduced fees under Chapter 8*
20 *(commencing with section 1525) for applications, petitions, and*
21 *permits under this article.*

22 (c) In addition to subdivisions (a) and (b), an application shall
23 include all of the following:

24 (1) Evidence that the applicant has completed any environmental
25 review required by, or the project is exempt from, the California
26 Environmental Quality Act (Division 13 (commencing with Section
27 21000) of the Public Resources Code). *To the extent funding is*
28 *available, the board shall review and comment on any notice of*
29 *preparation or draft environmental document for a project subject*
30 *to approval under this article, and include in the board's comments*
31 *identification of any instream beneficial uses of waters of the state*
32 *that may be affected by the project. This paragraph is not a*
33 *limitation on the authority of the board under any other law.*

34 (2) A certification *from the Department of Fish and Wildlife*
35 *that the applicant has consulted with the Department of Fish and*
36 *Wildlife at least 30 days before submission of the application. If*
37 *the Department of Fish and Wildlife determines that it needs*
38 *additional time for review, it may provide for a longer consultation*
39 *period, not to exceed 60 days.* The certification shall include a

1 copy of any conditions proposed by the Department of Fish and
2 Wildlife.

3 (3) (A) Except as provided in subparagraph (B), a ~~complete~~
4 water availability analysis that quantifies, under a range of
5 foreseeable hydrologic conditions, the amount of unappropriated
6 water available considering ~~instream beneficial uses and~~ all known
7 legal users who divert water hydrologically connected to the
8 proposed point of ~~diversion~~. *diversion, effects on beneficial uses,*
9 *including instream beneficial uses, and the ability to meet water*
10 *quality objectives.*

11 ~~(B) If the applicant proposes to divert water only when flows~~
12 ~~in the source waterbody exceed an established or calculated flood~~
13 ~~stage, a simplified water availability analysis.~~

14 *(B) A simplified water availability analysis, if the applicant*
15 *proposes to divert water only when flow in the source waterbody*
16 *exceeds an established or calculated flood stage, or if the applicant*
17 *requests board consideration of a simplified water availability*
18 *analysis prior to submittal of the application, and the deputy*
19 *director finds that a simplified water availability analysis is*
20 *sufficient for the board to make the findings required by subdivision*
21 *(b) of Section 1433.1.*

22 (4) A proposed accounting method for storage and extraction
23 of water diverted under the permit that is ~~certified~~ *either of the*
24 *following:*

25 *(A) Certified to be consistent with the groundwater sustainability*
26 *plan or alternative approved pursuant to Section 10733.6 by the*
27 *groundwater sustainability agency or local agency for the basin*
28 *where the water is proposed to be stored. stored or the local agency*
29 *responsible for implementing the approved alternative.*

30 *(B) If there is no applicable groundwater sustainability plan or*
31 *alternative approved pursuant to Section 10733.6, adequate to*
32 *demonstrate beneficial use of water under the proposed permit*
33 *and not inconsistent with the department's standards in Section*
34 *356.2 of Title 23 of the California Code of Regulations.*

35 1433.3. (a) As soon as practicable after the receipt of an
36 application, the board shall issue and deliver to the applicant a
37 notice of the application that includes the information required by
38 Section 1301 and a list of persons who, in the judgment of the
39 board, could be adversely affected by the temporary diversion and

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1 use. The board shall post the notice to its internet website within
2 10 days of issuing the notice to the applicant.

3 (b) The applicant shall provide notice by registered or electronic
4 mail to each person on the list of interested persons provided by
5 the board and the list of interested persons maintained by any
6 groundwater sustainability agency or local agency for the basin
7 where the water is proposed to be stored. The applicant shall
8 provide proof of notice to the board.

9 (c) Any interested person may file an objection to the temporary
10 diversion and use with the board within 30 days of the mailing of
11 the notice by the applicant. A person filing an objection shall send
12 a copy to the applicant.

13 (d) The board shall consider an objection, and may hold a
14 hearing on the objection after notice to all interested persons, before
15 acting upon an application for a permit.

16 1433.4. The board shall supervise diversion and use of water
17 under a permit issued under this article for the protection of all
18 lawful users of ~~water and water~~, *for protection of beneficial uses,*
19 *including instream beneficial-uses uses, the ability to meet water*
20 *quality objectives*, and for compliance with permit conditions. The
21 permit may require a person who extracts water stored under the
22 permit to comply with regulatory and permitting requirements for
23 groundwater extraction set by the groundwater sustainability plan
24 or alternative approved pursuant to Section 10733.6 for the basin.

25 1433.5. A permit issued under this article shall not result in
26 the creation of a vested right, even of a temporary nature. The
27 permit is subject, at all times, to modification or revocation at the
28 discretion of the ~~board~~: *board, after the permittee has adequate*
29 *notice and an adequate opportunity to be heard concerning any*
30 *proposed modification or revocation*. The authorization to divert
31 and use water under the permit shall automatically expire five
32 years after the authorization takes effect, unless an earlier date is
33 specified or the temporary permit is revoked, and shall be junior
34 in priority to any subsequent appropriation not subject to this
35 chapter. The five-year period does not include any time required
36 for monitoring, reporting, or mitigation before or after the
37 authorization to divert or use water under the permit. The five-year
38 period is a limitation on the authorization to divert and not a
39 limitation on the authorization for beneficial use of the water
40 diverted to underground storage.

1 1433.6. The board may renew a permit issued under this article
2 if the board, in its judgment, concludes that the applicant has
3 exercised due diligence in applying for a permit pursuant to
4 provisions of this division, other than this chapter, and in pursuing
5 that application once it is filed. The board shall process a request
6 for a renewal of a permit issued under this article pursuant to this
7 ~~article, except that the board shall not require~~ *article. The board*
8 *may request* the permittee to file ~~duplicate~~ maps, drawings, or
9 other data ~~if they were~~ furnished with the original application for
10 the permit. Each renewal of a permit issued under this article shall
11 be valid for a period not to exceed five years from the date of
12 renewal.

13 ~~SEC. 8.~~

14 *SEC. 9.* The heading of Chapter 6.6 (commencing with Section
15 1435) of Part 2 of Division 2 of the Water Code is amended to
16 read:

17
18 CHAPTER 6.6. TEMPORARY CHANGES

19
20 ~~SEC. 9.~~

21 *SEC. 10.* The heading of Article 1 (commencing with Section
22 1435) is added to Chapter 6.6 of Part 2 of Division 2 of the Water
23 Code, to read:

24
25 Article 1. Temporary Urgency Changes

26
27 ~~SEC. 10.~~

28 *SEC. 11.* Section 1435 of the Water Code is amended to read:

29 1435. (a) Any permittee or licensee who has an urgent need
30 to change a point of diversion, place of use, or purpose of use from
31 that specified in the permit or license may petition for, and the
32 board may issue, a conditional, temporary change order without
33 complying with other procedures or provisions of this division,
34 but subject to all requirements of this article.

35 (b) Prior to issuing a change order pursuant to this article, the
36 board shall make all of the following findings:

37 (1) The permittee or licensee has an urgent need to make the
38 proposed change.

39 (2) The proposed change may be made without injury to any
40 other lawful user of water.

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1 (3) The proposed change may be made without unreasonable
2 effect upon fish, wildlife, or other instream beneficial uses.

3 (4) The proposed change is in the public interest, including
4 findings to support change order conditions imposed to ensure that
5 the change is in the public interest, and may be made without injury
6 to any other lawful user of the water, and without unreasonable
7 effect upon fish, wildlife, and other instream beneficial uses.

8 (c) “Urgent need,” for the purposes of this article, means the
9 existence of circumstances from which the board may in its
10 judgment conclude that the proposed temporary change is necessary
11 to further the constitutional policy that the water resources of the
12 state be put to beneficial use to the fullest extent of which they are
13 capable and that waste of water be prevented; except that the board
14 shall not find a petitioner’s need to be urgent if the board in its
15 judgment concludes, if applicable, that the petitioner has not
16 exercised due diligence either (1) in petitioning for a change
17 pursuant to provisions of this division other than this article, or
18 (2) in pursuing that petition for change.

19 (d) The board may delegate to any officer or employee of the
20 board all or any of its functions under this article, as provided in
21 Section 7.

22 ~~SEC. 11.~~

23 *SEC. 12.* Section 1440 of the Water Code is amended to read:

24 1440. A temporary change order issued under this article shall
25 not result in the creation of a vested right, even of a temporary
26 nature, but shall be subject at all times to modification or revocation
27 in the discretion of the board. The authorization to divert and use
28 water under a temporary change order shall automatically expire
29 180 days after the authorization takes effect, unless an earlier date
30 is specified or the temporary change order is revoked. The 180-day
31 period does not include any time required for monitoring, reporting,
32 or mitigation before or after the authorization to divert or use water
33 under the temporary change order. If the temporary change order
34 authorizes diversion to storage, the 180-day period is a limitation
35 on the authorization to divert and not a limitation on the
36 authorization for beneficial use of water diverted to storage.

37 ~~SEC. 12.~~

38 *SEC. 13.* Section 1441 of the Water Code is amended to read:

39 1441. A temporary change order issued under this article may
40 be renewed by the board. Requests for renewal shall be processed

1 in the manner provided by this chapter except that the permittee
2 or licensee shall not be required to file duplicate maps, drawings,
3 or other data if they were furnished with the original petition. Each
4 such renewal shall be valid for a period not to exceed 180 days
5 from the date of renewal.

6 ~~SEC. 13.~~

7 *SEC. 14.* Section 1442 of the Water Code is amended to read:

8 1442. This article shall not apply to any permittee or licensee
9 petitioning for a temporary change pursuant to Chapter 10.5
10 (commencing with Section 1725).

11 ~~SEC. 14.~~

12 *SEC. 15.* Article 2 (commencing with Section 1443) is added
13 to Chapter 6.6 of Part 2 of Division 2 of the Water Code, to read:

14 Article 2. Temporary Changes for Diversion to Underground
15 Storage
16

17
18 1443. (a) Unless the context otherwise requires, the following
19 definitions govern the construction of this article:

20 (a) “Beneficial use” includes, but is not limited to, the following:

21 (1) ~~Prevention of significant and unreasonable seawater~~
22 ~~intrusion.~~

23 (2) ~~Prevention of significant and unreasonable degradation of~~
24 ~~water quality, including the migration of contaminant plumes that~~
25 ~~impair water supplies.~~

26 (3) ~~Prevention of significant and unreasonable land subsidence~~
27 ~~that substantially interferes with surface land uses.~~

28 (4) ~~Maintenance or enhancement of groundwater dependent~~
29 ~~ecosystems.~~

30 (5) ~~Beneficial uses that require the extraction of stored water.~~

31 (b)

32 (1) “Local agency” has the same meaning as defined in Section
33 10721.

34 (e)

35 (2) “Groundwater sustainability agency” has the same meaning
36 as defined in Section 10721.

37 (b) *This article shall not apply to diversions within the*
38 *groundwater basins identified in paragraph (24) of subdivision*

39 *(a) of, or subdivision (c) of, Section 10720.8.*

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1 1443.1. (a) A groundwater sustainability agency or a local
2 agency that is a permittee or a licensee under provisions of this
3 division other than this article, may petition for, and the board may
4 issue, a conditional temporary change order that authorizes the
5 diversion of surface water to underground storage for beneficial
6 use that advances the sustainability goal of a groundwater basin
7 under Part 2.74 (commencing with Section 10720) of Division 6,
8 without complying with other procedures or provisions of this
9 division, subject to all requirements of this article.

10 (b) Before issuing a change order pursuant to this article, the
11 board shall make all of the following findings based upon a
12 preponderance of the evidence:

13 (1) The proposed change is for diversion to underground storage
14 for beneficial use ~~that advances the sustainability goal of a~~
15 ~~groundwater basin.~~ *consistent with subdivision (a).*

16 (2) The proposed change may be made without injury to any
17 other lawful user of water. This finding may be satisfied by
18 demonstrating both of the following:

19 (A) The proposed diversion to underground storage will occur
20 only when ~~flows flow~~ in the source waterbody ~~exceeds~~
21 the claims of all known legal users who divert water downstream of
22 the proposed point of diversion.

23 (B) Storage and extraction from storage in the basin under the
24 proposed change will be subject to accounting methods and
25 reporting requirements established by ~~a~~ *any of the following:*

26 (i) A groundwater sustainability ~~plan, interim plan, or alternative~~
27 ~~plan.~~

28 (ii) *An interim plan.*

29 (iii) *An alternative* approved pursuant to Section ~~10733.6 that~~
30 ~~the board finds adequate to prevent injury to any lawful user of~~
31 ~~water.~~ *10733.6.*

32 (iv) *The board, in applying conditions to the temporary change.*

33 (3) The proposed change may be made without unreasonable
34 effect upon fish, wildlife, or other instream beneficial ~~uses.~~ *uses*
35 *or on the ability to meet water quality objectives. If the permit does*
36 *not include a condition proposed by the Department of Fish and*
37 *Wildlife under paragraph (2) of subdivision (c) of Section 1443.2*
38 *the board shall include in the findings an explanation of why the*
39 *condition is not included.*

1 (4) The proposed change is in the public interest, including
2 findings to support change order conditions imposed to ensure that
3 the water is diverted and used in the public interest, without injury
4 to any lawful user of water, and without unreasonable effect upon
5 fish, wildlife, and other instream beneficial uses.

6 (c) The board may delegate to any officer or employee of the
7 board all or any of its functions under this article, as provided in
8 Section 7.

9 1443.2. (a) The petition for a temporary change order shall be
10 completed in accordance with the rules of the board that specify
11 the information and maps to be included in a petition for change.

12 (b) (1) A petitioner for a change order shall pay a fee calculated
13 in accordance with the provisions of Chapter 8 (commencing with
14 Section 1525).

15 (2) *Consistent with Section 3 of Article XIII A of the California*
16 *Constitution and the board's authority to set fees to promote the*
17 *conservation and utilization of water resources in the public*
18 *interest, the board may adopt reduced fees under Chapter 8*
19 *(commencing with section 1525) for applications, petitions, and*
20 *change orders under this article.*

21 (c) In addition to subdivisions (a) and (b), a petition shall include
22 all of the following:

23 (1) Evidence that the petitioner has completed any environmental
24 review required by, or the project is exempt from, the California
25 Environmental Quality Act (Division 13 (commencing with Section
26 21000) of the Public Resources Code). *To the extent funding is*
27 *available, the board shall review and comment on any notice of*
28 *preparation or draft environmental document for a project subject*
29 *to approval under this article, and include in the board's comments*
30 *identification of any instream beneficial uses of waters of the state*
31 *that may be affected by the project. This paragraph is not a*
32 *limitation on the authority of the board under any other law.*

33 (2) A certification *from the Department of Fish and Wildlife*
34 that the petitioner has consulted with the Department of Fish and
35 Wildlife at least 30 days before submission of the petition. *If the*
36 *Department of Fish and Wildlife determines that it needs additional*
37 *time for review, it may provide for a longer consultation period,*
38 *not to exceed 60 days.* The certification shall include a copy of
39 any conditions proposed by the Department of Fish and Wildlife.

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1 ~~(3) (A) Except as provided in subparagraph (B), a complete~~
2 ~~water availability analysis that quantifies, under a range of~~
3 ~~foreseeable hydrologic conditions, the amount of unappropriated~~
4 ~~water available considering instream beneficial uses and all known~~
5 ~~legal users who divert water hydrologically connected to the~~
6 ~~proposed point of diversion.~~

7 ~~(B) If the petitioner proposes to divert water only when flows~~
8 ~~in the source waterbody exceed an established or calculated flood~~
9 ~~stage, a simplified water availability analysis.~~

10 ~~(4)~~

11 (3) A proposed accounting method for storage and extraction
12 of water diverted under the change order that is ~~certified~~ *either of*
13 *the following:*

14 (A) *Certified* to be consistent with the groundwater
15 sustainability plan or alternative approved pursuant to Section
16 10733.6 by the groundwater sustainability agency ~~or local agency~~
17 for the basin where the water is proposed to be ~~stored.~~ *stored or*
18 *the local agency responsible for implementing the approved*
19 *alternative.*

20 (B) *If there is no applicable groundwater sustainability plan or*
21 *alternative approved pursuant to Section 10733.6, adequate to*
22 *demonstrate beneficial use of water under the proposed change*
23 *order and not inconsistent with the department's standards in*
24 *Section 356.2 of Title 23 of the California Code of Regulations.*

25 1443.3. (a) As soon as practicable after the receipt of a petition
26 for a temporary change order, the board shall issue and deliver to
27 the petitioner a notice of the petition and a list of persons who, in
28 the judgment of the board, could be adversely affected by the
29 temporary change. The board shall post the notice to its internet
30 website within 10 days of issuing the notice to the petitioner.

31 (b) The petitioner shall provide notice by registered or electronic
32 mail to each person on the list of interested persons provided by
33 the board and the list of interested persons maintained by any
34 groundwater sustainability agency or local agency for the basin
35 where the water is proposed to be stored. The petitioner shall
36 provide proof of notice to the board.

37 (c) Any interested person may file an objection to the temporary
38 diversion and use with the board within 30 days of the mailing of
39 the notice by the petitioner. A person filing an objection shall send
40 a copy to the applicant.

1 (d) The board shall consider an objection, and may hold a
2 hearing on the objection after notice to all interested persons, before
3 acting upon a petition for a temporary change order.

4 1443.4. The board shall supervise diversion and use of water
5 under a change order issued under this article for the protection of
6 all lawful users of water and instream beneficial uses and for
7 compliance with change order conditions. The change order may
8 require a person who extracts water stored under the change order
9 to comply with regulatory and permitting requirements for
10 groundwater extraction set by the groundwater sustainability plan
11 or alternative approved pursuant to Section 10733.6 for the basin.

12 1443.5. A change order issued under this article shall not result
13 in the creation of a vested right, even of a temporary nature. The
14 change order is subject, at all times, to modification or revocation
15 at the discretion of the ~~board~~. *board, after the permittee or licensee*
16 *has adequate notice and an adequate opportunity to be heard*
17 *concerning any proposed modification or revocation.* The
18 authorization to divert and use water under the change order shall
19 automatically expire five years after the authorization takes effect,
20 unless an earlier date is specified or the temporary change order
21 is revoked, and shall be junior in priority to any subsequent
22 appropriation not subject to this chapter. The five-year period does
23 not include any time required for monitoring, reporting, or
24 mitigation before or after the authorization to divert or use water
25 under the change order. The five-year period is a limitation on the
26 authorization to divert and not a limitation on the authorization
27 for beneficial use of the water diverted to underground storage.

28 1443.6. The board may renew a change order issued under this
29 article if the board, in its judgment, concludes that the petitioner
30 has exercised due diligence in applying for a change pursuant to
31 provisions of this division, other than this chapter, and in pursuing
32 that petition once it is filed. The board shall process a request for
33 a renewal of a change order issued under this article pursuant to
34 this article. The board may request the petitioner to file maps,
35 drawings, or other data furnished with the original petition for the
36 change order. Each renewal of a change order issued under this
37 article shall be valid for a period not to exceed five years from the
38 date of renewal.

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1 1443.7. This article does not apply to any permittee or licensee
2 petitioning for a temporary change pursuant to Chapter 10.5
3 (commencing with Section 1725).

4 ~~SEC. 15.~~

5 *SEC. 16.* Section 1704.4 of the Water Code is amended to read:

6 1704.4. For purposes of this chapter, a minor petition for
7 change means either of the following:

8 (a) Any petition which does not involve direct diversions in
9 excess of three cubic-feet per second or storage in excess of 200
10 acre-feet per year.

11 (b) A petition for change by a groundwater sustainability agency
12 or local agency, as defined in Section 10721, for a change
13 previously authorized by a temporary change under Article 2
14 (commencing with Section 1443) of Chapter ~~6.6~~ and that the
15 ~~Division of Water Rights has determined, in its discretion, that~~
16 ~~data available from a field investigation and operation under the~~
17 ~~temporary change is sufficient to issue a decision.~~ 6.6.

O