

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 21, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1806**

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**Introduced by Assembly Member Wolk**

January 16, 2008

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An act to add Chapter 4.5 (commencing with Section 1450) to Division 2 of the Fish and Game Code, *and to amend Section 1552 of, to add Section 12221 to,* and to add Chapter 1.5 (commencing with Section 12210) to Part 4.5 of Division 6 of, the Water Code, relating to ~~fish and wildlife~~ resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1806, as amended, Wolk. ~~Fish: rescue or relocation: emergency contingency plans.~~ *Resources.*

(1) Existing law authorizes the Department of Fish and Game to enter into various agreements with public and private entities for the protection, conservation, and management of fish and wildlife resources. The Natural Community Conservation Planning Act authorizes the department to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, to provide comprehensive management and conservation of multiple wildlife species. The act requires a plan to identify and provide for those measures necessary to conserve and manage natural biological diversity within the plan area while allowing compatible and appropriate economic development, growth, and other human uses. Other existing law prohibits an entity from substantially diverting or obstructing the

natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake designated by the department, without first notifying the department of that activity, and entering into a lake or streambed alteration agreement, if required by the department to protect fish and wildlife resources.

~~This bill would prohibit a state or federal public land manager from implementing any action on land or waters under its control within the boundaries of the Sacramento-San Joaquin Delta that will significantly and adversely affect identified fishery resources unless it develops and implements, in consultation with the department and other relevant state and federal agencies, an emergency contingency plan to rescue or relocate the identified fishery resources. The bill would require the department to develop protocols and guidelines for an emergency contingency plan~~ *require the department to prepare and implement a set of protocols to be used to evaluate the need for fish rescue and relocation plans and actions on behalf of the Sacramento-San Joaquin Delta fishery resources, and to guide the implementation of those actions.* The bill would require the department to expedite *the* approval of any permit required from the department for implementation of fish rescue efforts.

(2) Under existing federal law, the United States Bureau of Reclamation operates the Central Valley Project and appropriates water for the beneficial uses of that project pursuant to permits granted by the State Water Resources Control Board and subject to specified state laws. The Department of Water Resources operates the State *Water* Resources Development System and appropriates water for that system pursuant to permits granted by the state board.

This bill would require the state board, on or before January 1, 2010, to review a specified mass fish death incident in connection with a bureau levee repair project, determine appropriate actions to mitigate the destruction of fish in that incident, and impose, *to the extent authorized by law*, terms and conditions on the permits of the bureau to implement those identified actions. ~~The~~

*The* bill would require the state board, *based on a specified review which the state board would be required to undertake, to reopen and* impose terms and conditions on *water rights* permits for the state system and the federal project with regard to the delta that provide reasonable mitigation for both direct and indirect adverse impacts on delta fishery

resources arising from the operation of the water export facilities of the state system and the federal project. *The state board would be required to incorporate the costs of implementing this provision into the calculation of specified water use fees.*

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. Chapter 4.5 (commencing with Section 1450) is  
2 added to Division 2 of the Fish and Game Code, to read:

3

4 ~~CHAPTER 4.5. EMERGENCY CONTINGENCY PLANS~~

5

6 ~~1450. A state or federal public land manager shall not~~  
7 ~~implement any action on land or waters under its control within~~  
8 ~~the boundaries of the Sacramento-San Joaquin Delta that will~~  
9 ~~significantly and adversely affect identified fishery resources unless~~  
10 ~~the state or federal agency develops and implements, in~~  
11 ~~consultation with the department and other relevant state and~~  
12 ~~federal agencies, an emergency contingency plan to rescue or~~  
13 ~~relocate the identified fishery resources. The department shall~~  
14 ~~develop protocols and guidelines for an emergency contingency~~  
15 ~~plan.~~

16 ~~1451. An emergency contingency plan pursuant to this chapter~~  
17 ~~shall include all of the following:~~

18 ~~(a) Provisions for the participation and training of volunteers~~  
19 ~~to assist, as appropriate, in rescue efforts pursuant to the plan.~~

20 ~~(b) Coordination with and notification of local government~~  
21 ~~agencies in the development and implementation of the plan.~~

22 ~~(c) Opportunity for public comment on the plan.~~

23 ~~1452. The department shall consult with state and federal public~~  
24 ~~land managers on the development of plans pursuant to this chapter.~~

25

26 ~~CHAPTER 4.5~~

27

28 ~~1450. (a) The Legislature finds and declares that, in situations~~  
29 ~~where the Sacramento-San Joaquin Delta fishery resources are~~  
30 ~~at risk due to manmade or natural events, it is consistent with the~~  
31 ~~mission and public trust responsibilities of the department to~~

1 *coordinate fishery rescue and relocation efforts, including*  
 2 *engaging volunteers in those efforts.*

3 *(b) The department shall prepare and implement a set of*  
 4 *protocols to be used to evaluate the need for fish rescue and*  
 5 *relocation plans and actions on behalf of the Sacramento-San*  
 6 *Joaquin Delta fishery resources, and to guide the implementation*  
 7 *of those actions.*

8 *(c) During the development of the protocols, the department*  
 9 *shall consult with interested local, state, and federal stakeholders,*  
 10 *including landowners and recreational fishing groups. During*  
 11 *this collaboration, the department shall solicit the establishment*  
 12 *of networks of volunteers willing to assist during an incident for*  
 13 *which the department determines that fish rescue or relocation is*  
 14 *appropriate.*

15 *(d) The protocols shall be adopted by the department no later*  
 16 *than January 30, 2009. The protocols shall be posted on the*  
 17 *department’s Internet Web site, along with information relating*  
 18 *to becoming a volunteer, as described in subdivision (c).*

19 ~~1454.~~

20 *1451. If there is an emergency that threatens fish and wildlife*  
 21 *fishery resources on public lands, the department shall expedite*  
 22 *approval of any permit required from the department for*  
 23 *implementation of fish rescue efforts.*

24 ~~1455.~~

25 *1452. On or before January 1, 2010, the State Water Resources*  
 26 *Control Board shall do all of the following:*

27 *(a) Review the mass fish death incident at Prospect Island in*  
 28 *the fall of 2007 in connection with the United States Bureau of*  
 29 *Reclamation’s levee repair project.*

30 *(b) Determine appropriate actions to mitigate the destruction of*  
 31 *fish in that incident.*

32 *(c) Impose, to the extent authorized by law, terms and conditions*  
 33 *on the permits issued in accordance with Part 2 (commencing with*  
 34 *Section 1200) of Division 2 of the Water Code to the United States*  
 35 *Bureau of Reclamation with regard to the federal Central Valley*  
 36 *Project to implement the actions identified in subdivision (b).*

37 ~~SEC. 2. Chapter 1.5 (commencing with Section 12210) is added~~  
 38 ~~to Part 4.5 of Division 6 of the Water Code, to read:~~

~~CHAPTER 1.5. WATER RIGHTS~~

~~12210. The state board shall impose terms and conditions on permits issued for the State Water Resources Development System and the federal Central Valley Project in accordance with Part 2 (commencing with Section 1200) of Division 2 with regard to the Sacramento-San Joaquin Delta that provide reasonable mitigation for both direct and indirect adverse impacts on delta fishery resources arising from the operation of water export facilities of the state system and the federal project.~~

*SEC. 2. Section 1552 of the Water Code is amended to read:*

1552. The money in the Water Rights Fund is available for expenditure, upon appropriation by the Legislature, for the following purposes:

(a) For expenditure by the State Board of Equalization in the administration of this chapter and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) in connection with any fee or expense subject to this chapter.

(b) For the payment of refunds, pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, of fees or expenses collected pursuant to this chapter.

(c) For expenditure by the board for the purposes of carrying out this division, Division 1 (commencing with Section 100), Part 2 (commencing with Section 10500) of Division 6, and Chapter 1.5 (commencing with Section 12210) of Part 4.5 of Division 6, and Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

(d) For expenditures by the board for the purposes of carrying out Sections 13160 and 13160.1 in connection with activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

(e) For expenditures by the board for the purposes of carrying out Sections 13140 and 13170 in connection with plans and policies that address the diversion or use of water.

*SEC. 3. Chapter 1.5 (commencing with Section 12210) is added to Part 4.5 of Division 6 of the Water Code, to read:*

CHAPTER 1.5. WATER RIGHTS

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 2  
 3 12210. (a) The state board shall complete a comprehensive  
 4 review of conditions in the Sacramento-San Joaquin Delta for the  
 5 purpose of protecting the state’s public trust resources, including  
 6 all fishery resources, and federal, state, and local agency plans  
 7 to protect those public trust resources.  
 8 (b) Based upon that review, the state board shall exercise its  
 9 authority and duty under Section 2 of Article X of the California  
 10 Constitution and the public trust doctrine to reopen and impose  
 11 terms and conditions on water rights permits issued for the State  
 12 Water Resources Development System and the federal Central  
 13 Valley Project in accordance with Part 2 (commencing with Section  
 14 1200) of Division 2 with regard to the Sacramento-San Joaquin  
 15 Delta that provide reasonable mitigation for both direct and  
 16 indirect adverse impacts on all delta fishery resources arising  
 17 from the operation of water export facilities of the state system  
 18 and the federal project.  
 19 (c) The review required under subdivision (a) may include  
 20 consideration of existing water rights terms and conditions, a  
 21 proposed Bay-Delta Conservation Plan, federal agency biological  
 22 opinions, and relevant federal court decisions pursuant to state  
 23 and federal endangered species laws, Oroville Facilities FERC  
 24 Relicensing Settlement Agreement, actions pursuant to the Central  
 25 Valley Project Improvement Act, and any other information that  
 26 the state board deems reasonably reliable, without regard to any  
 27 party’s submissions to the review proceeding. The review shall  
 28 not be limited to species listed pursuant to state or federal  
 29 endangered species laws.  
 30 (d) The state board shall incorporate the costs of implementing  
 31 this section into the calculation of its fees pursuant to Section 1525.  
 32 SEC. 4. Section 12221 is added to the Water Code, to read:  
 33 12221. All statutory references or references in state  
 34 government documents to the Sacramento-San Joaquin Delta,  
 35 without regard to whether “Sacramento-San Joaquin” is included  
 36 in that reference, shall be deemed capitalized.

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