

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1884

Introduced by Assembly Member Buchanan

February 22, 2012

An act to amend Section 85057.5 of the Water Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

AB 1884, as amended, Buchanan. Sacramento-San Joaquin Delta Reform Act of 2009: covered actions.

Existing law, the Sacramento-San Joaquin Delta Reform Act of 2009, establishes the Delta Stewardship Council as an independent agency of the state. Existing law requires a state or local public agency that proposes to undertake a covered action that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. Existing law defines the term "covered action" to mean a plan, program, or project, as specified.

This bill would ~~make a technical, nonsubstantive change to the section defining covered action~~ *exclude from the definition of "covered action" any anticipated upgrades to existing drinking water, stormwater, or wastewater treatment facilities to meet state water quality requirements.*

Existing law, the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992, establishes a primary zone in the Delta where further development is barred and a secondary zone surrounding the Delta where development may proceed under certain conditions.

This bill would also exclude from the definition of "covered action" any levee improvements and other flood control projects in the

secondary zone, as specified, and would exclude from the definition the implementation of existing, fully permitted, habitat conservation and agricultural mitigation plans and programs within the primary and secondary zones of the Delta.

Existing law, the California Environmental Quality Act (CEQA), requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts housing for agricultural employees, housing affordable to low-income households, and other infill housing projects meeting specified criteria.

This bill would exclude from the definition of “covered action” specified plans, programs, projects, or activities within the secondary zone that have received environmental certification under CEQA or otherwise have vested rights as of the effective date of the Delta Plan, or both, and would exclude all of the categorical CEQA exemptions. This bill would also exclude from the definition agricultural employee housing, low-income housing, infill residential projects, and other infill development projects, as described.

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 85057.5 of the Water Code is amended
- 2 to read:
- 3 85057.5. (a) “Covered action” means a plan, program, or
- 4 project as defined pursuant to Section 21065 of the Public
- 5 Resources Code that meets all of the following conditions:
- 6 (1) Will occur, in whole or in part, within the boundaries of the
- 7 Delta or Suisun Marsh.
- 8 (2) Will be carried out, approved, or funded by the state or a
- 9 local public agency.
- 10 (3) Is covered by one or more provisions of the Delta Plan.

1 (4) Will have a significant impact on achievement of one or
2 both of the coequal goals or the implementation of
3 government-sponsored flood control programs to reduce risks to
4 people, property, and state interests in the Delta.

5 (b) “Covered action” does not include any of the following:

6 (1) A regulatory action of a state agency.

7 (2) Routine maintenance and operation of the State Water
8 Project or the federal Central Valley Project.

9 (3) Regional transportation plans prepared pursuant to Section
10 65080 of the Government Code.

11 (4) Any plan, program, project, or activity within the secondary
12 zone of the Delta that the applicable metropolitan planning
13 organization under Section 65080 of the Government Code has
14 determined is consistent with either a sustainable communities
15 strategy or an alternative planning strategy that the State Air
16 Resources Board has determined would, if implemented, achieve
17 the greenhouse gas emission reduction targets established by that
18 board pursuant to subparagraph (A) of paragraph (2) of subdivision
19 (b) of Section 65080 of the Government Code. For purposes of
20 this paragraph, “consistent with” means consistent with the use
21 designation, density, building intensity, transportation plan, and
22 applicable policies specified for the area in the sustainable
23 communities strategy or the alternative planning strategy, as
24 applicable, and any infrastructure necessary to support the plan,
25 program, project, or activity.

26 (5) Routine maintenance and operation of any facility located,
27 in whole or in part, in the Delta, that is owned or operated by a
28 local public agency.

29 (6) Any plan, program, project, or activity that occurs, in whole
30 or in part, in the Delta, if both of the following conditions are met:

31 (A) The plan, program, project, or activity is undertaken by a
32 local public agency that is located, in whole or in part, in the Delta.

33 (B) Either a notice of determination is filed, pursuant to Section
34 21152 of the Public Resources Code, for the plan, program, project,
35 or activity by, or the plan, program, project, or activity is fully
36 permitted by, September 30, 2009.

37 (7) (A) A project within the secondary zone, as defined pursuant
38 to Section 29731 of Public Resources Code as of January 1, 2009,
39 for which a notice of approval or determination pursuant to Section
40 21152 of the Public Resources Code has been filed before the date

1 on which the Delta Plan becomes effective. *This includes, but is*
2 *not limited to, any plan, program, project, or activity within the*
3 *secondary zone of the Delta, which is consistent with an adopted*
4 *general plan, sphere of influence, specific or master plan,*
5 *development agreement, subdivision map, or other land use*
6 *entitlement or permit, having received environmental certification*
7 *under the California Environmental Quality Act (Division 13*
8 *(commencing with Section 21000) of the Public Resources Code)*
9 *or which otherwise has vested rights as of the effective date of the*
10 *Delta Plan, or both.*

11 (B) Any project for which a notice of approval or determination
12 is filed on or after the date on which the final Bay Delta
13 Conservation Plan becomes effective, and before the date on which
14 the Delta Plan becomes effective, is not a covered action but shall
15 be consistent with the Bay Delta Conservation Plan.

16 (C) Subparagraphs (A) and (B) do not apply to either of the
17 following:

18 (i) Any project that is within a Restoration Opportunity Area
19 as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy
20 of the Bay Delta Conservation Plan, August 3, 2009, or as shown
21 in a final Bay Delta Conservation Plan.

22 (ii) Any project that is within the alignment of a conveyance
23 facility as shown in Figures 1 to 5, inclusive, of the Final Draft
24 Initial Assessment of Dual Delta Water Conveyance Report, April
25 23, 2008, and in future revisions of this document by the
26 department.

27 (8) *Implementation of existing, fully permitted, habitat*
28 *conservation and agricultural mitigation plans and programs*
29 *within the primary and secondary zones of the Delta.*

30 (9) *Agricultural employee housing, low-income housing, and*
31 *infill residential projects, as described in Section 21159.22,*
32 *21159.23, or 21159.24 of the Public Resources Code, and other*
33 *infill development projects, as defined in Section 15332 of Title*
34 *14 of the California Code of Regulations.*

35 (10) *All of the categorical exemptions recognized under the*
36 *California Environmental Quality Act (Division 13 (commencing*
37 *with Section 21000) of the Public Resources Code).*

38 (11) *Any anticipated upgrades to existing drinking water,*
39 *stormwater, or wastewater treatment facilities to meet state water*
40 *quality requirements.*

1 *(12) Any levee improvements and other flood control projects*
2 *in the secondary zone of the Delta that are consistent with state*
3 *standards or federal standards, or both, and which have complied*
4 *with the California Environmental Quality Act (Division 13*
5 *commencing with Section 21000) of the Public Resources Code*
6 *or the federal National Environmental Policy Act (42 U.S.C. Sec.*
7 *4321 et seq.), or both.*

8 (c) Nothing in the application of this section shall be interpreted
9 to authorize the abrogation of any vested right whether created by
10 statute or by common law.

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