

AMENDED IN ASSEMBLY JULY 3, 2013  
AMENDED IN ASSEMBLY JUNE 25, 2013  
AMENDED IN SENATE APRIL 16, 2013  
AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 749**

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**Introduced by Senator Wolk  
(Coauthor: Senator Berryhill)**

February 22, 2013

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An act to amend Section 2087 of, to amend, repeal, and add Sections 2074.2, 2074.6, 2074.8, and 2075.5 of, to add Sections 1745.1 and 3517 to, and to add Article 2.5 (commencing with Section 1758) to Chapter 7.5 of Division 2 of, the Fish and Game Code, and to add Section 1018 to the Water Code, relating to fish and wildlife resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 749, as amended, Wolk. Habitat protection: endangered species.

(1) Existing law authorizes the Department of Fish and Wildlife to enter into contracts or other agreements with nonprofit conservation groups, as specified, for the management and operation of department-managed lands, defined to include public shooting grounds, state marine recreational management areas, ecological reserves, and wildlife management areas. Existing law states that it is the policy of the state to maintain sufficient populations of all species of wildlife and native plants and the habitat necessary to insure their continued existence at the optimum levels possible to insure, among other things, the policy to perpetuate native plants and all species of wildlife for their intrinsic and ecological values, as well as for their direct benefits to humanity.

This bill would authorize the department to lease department-managed lands for agricultural activities, as specified. The bill would authorize, *upon appropriation by the Legislature*, the moneys collected from those agricultural leases to be used to support the *management*, maintenance, *restoration*, and operations of department-managed lands. The bill would require the department to identify, as specified, and maintain lands for the purpose of restoring or enhancing upland nesting cover and associated waterfowl brood habitat to support the production of resident waterfowl and upland game birds. The bill would also require the department, in the manner it deems appropriate, to annually solicit comments and recommendations from the upland game bird advisory committee.

(2) The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the department to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. Under the act, an interested person may petition the commission to add a species to, or remove a species from, either the list of endangered species or the list of threatened species, and existing law requires the commission to consider the petition at a meeting, as prescribed.

This bill, until January 1, 2017, would establish an alternate process for the review of a petition, including public hearings.

(3) The California Endangered Species Act also provides, until January 1, 2014, that the accidental take of candidate, threatened, or endangered species resulting from acts that occur on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited by the act.

This bill would make a technical change to these provisions and extend this exception to January 1, 2020. The bill would define “accidental” for these purposes.

(4) Existing law defines resident game birds and upland game bird species. Existing law permits the taking of certain nongame birds.

This bill would prohibit a state agency from prohibiting, conditioning, penalizing, or otherwise restricting the establishment of upland nesting cover or associated waterfowl brood habitat for the purpose of propagating waterfowl, upland game birds, or other protected birds without the concurrence of the department.

(5) Existing law establishes various state water policies, including the policy that the use of water for domestic purposes is the highest use

of water and the use of water for irrigation is the next highest use of water.

This bill would declare it is the policy of the state that, when agricultural lands are being idled in order to provide water for transfer, the growth of nonirrigated cover crops or natural vegetation for waterfowl, upland game bird, and other wildlife habitat, carbon sequestration, and air quality benefits is required to be encouraged on those lands, 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 1745.1 is added to the Fish and Game  
2 Code, to read:

3 1745.1. (a) Notwithstanding any other provision of this code,  
4 the department may lease department-managed lands for  
5 agricultural activities, including, but not limited to, grazing, where  
6 consistent with the purpose for which the lands were acquired and  
7 compatible with the department’s approved management plan for  
8 the area, if available.

9 (b) ~~Notwithstanding subdivision (c) of Section 1348, the~~*The*  
10 *moneys collected from agricultural leases entered into pursuant to*  
11 *subdivision (a) shall be deposited by the department into the*  
12 *Wildlife Restoration Fund and, upon appropriation by the*  
13 *Legislature, may be used to support the management, maintenance,*  
14 *restoration, and operations of department-managed lands.*~~The~~  
15 ~~department may deposit those moneys in the Wildlife Restoration~~  
16 ~~Fund or the Fish and Game Preservation Fund.~~

17 SEC. 2. Article 2.5 (commencing with Section 1758) is added  
18 to Chapter 7.5 of Division 2 of the Fish and Game Code, to read:

19

20 Article 2.5. Bird Habitat Conservation

21

22 1758. (a) In the annual work plans for the department’s wildlife  
23 management areas, the department shall identify those lands,  
24 including a description of proposed habitat management areas,  
25 which it shall maintain for the purpose of restoring or enhancing  
26 upland nesting cover and associated waterfowl brood habitat to

1 support the production of resident waterfowl and upland game  
2 birds.

3 (b) For lands and proposed habitat management activities  
4 identified and described in subdivision (a), the department, in the  
5 manner it deems appropriate, shall annually solicit comments and  
6 recommendations from the upland game bird advisory committee  
7 described in subdivision (e) of Section 3684.

8 SEC. 3. Section 2074.2 of the Fish and Game Code is amended  
9 to read:

10 2074.2. (a) At the meeting scheduled pursuant to Section 2074,  
11 the commission shall hold a public hearing on the petition and  
12 shall receive information, written or otherwise, and oral testimony.  
13 After the conclusion of oral testimony from the commission and  
14 department staff, the petitioner, or any other persons, the  
15 commission may close the public hearing and administrative record  
16 for the commission’s decision pursuant to this section.

17 (b) After the commission closes the public hearing, the  
18 administrative record for the commission’s decision is closed and  
19 it shall not be reopened except as provided in subdivision (c). Once  
20 the public hearing is closed, no person shall submit further  
21 information to the commission for consideration on that petition  
22 and the commission shall not accept any further information for  
23 consideration on that petition except as provided in subdivision  
24 (c).

25 (c) The administrative record for the commission’s decision  
26 pursuant to this section shall not be reopened once the commission  
27 closes the public hearing unless one of the following occurs prior  
28 to the commission’s decision:

29 (1) There is a change in state or federal law or regulation that  
30 has a direct and significant impact on the commission’s  
31 determination as to whether the petition provides sufficient  
32 information to indicate that the petitioned action may be warranted.

33 (2) The commission determines that it requires further  
34 information to evaluate whether the petition provides sufficient  
35 information to indicate that the petitioned action may be warranted.  
36 If the commission makes that determination during its deliberation,  
37 the commission may request, on the record at the scheduled  
38 meeting or at a continued meeting, further information on any  
39 issue relevant to making its determination as to whether the petition  
40 provides sufficient information to indicate that the petitioned action

1 may be warranted. Any request by the commission pursuant to  
2 this paragraph shall specify a date by which the information must  
3 be submitted to the commission and shall serve to reopen the  
4 administrative record for the limited purpose of receiving further  
5 information relating to the issues specified by the commission in  
6 the request. Commission and department staff, the petitioner, or  
7 any other person may submit information in response to a request  
8 pursuant to this paragraph.

9 (d) In its discretion, the commission may either close the public  
10 hearing and continue the meeting on the petition for the purpose  
11 of deliberation or continue both the public hearing and the meeting  
12 on the petition to a subsequent date, which shall be no later than  
13 90 days after the meeting scheduled pursuant to Section 2074, and  
14 subject to applicable notice and agenda requirements. If the  
15 commission closes the public hearing but continues the meeting  
16 for the purpose of deliberation, a person shall not submit, and the  
17 commission shall not receive, further information relating to the  
18 petition except as provided in subdivision (c).

19 (e) At the meeting scheduled pursuant to Section 2074 or at a  
20 continued meeting scheduled pursuant to subdivision (d), the  
21 commission shall consider the petition, the department's written  
22 report, written comments received, and oral testimony provided  
23 during the public hearing, and the commission shall make and  
24 enter in its record one of the following findings:

25 (1) If the commission finds that the petition does not provide  
26 sufficient information to indicate that the petitioned action may  
27 be warranted, the commission shall publish a notice of finding that  
28 the petition is rejected, including the reasons why the petition is  
29 not sufficient.

30 (2) If the commission finds that the petition provides sufficient  
31 information to indicate that the petitioned action may be warranted,  
32 the commission shall publish a notice of finding that the petition  
33 is accepted for consideration. If the accepted petition recommends  
34 the addition of a species to either the list of endangered species or  
35 the list of threatened species, the commission shall include in the  
36 notice that the petitioned species is a candidate species. The  
37 commission shall maintain a list of species which are candidate  
38 species.

39 (f) The commission shall publish and distribute the findings  
40 relating to the petition pursuant to Section 2078.

1 (g) This section shall remain in effect only until January 1, 2017,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2017, deletes or extends that date.

4 SEC. 4. Section 2074.2 is added to the Fish and Game Code,  
5 to read:

6 2074.2. (a) At the scheduled meeting, the commission shall  
7 consider the petition, the department’s written report, and  
8 comments received, and the commission shall make and enter in  
9 its public record one of the following findings:

10 (1) If the commission finds that the petition does not provide  
11 sufficient information to indicate that the petitioned action may  
12 be warranted, the commission shall publish a notice of finding that  
13 the petition is rejected, including the reasons why the petition is  
14 not sufficient.

15 (2) If the commission finds that the petition provides sufficient  
16 information to indicate that the petitioned action may be warranted,  
17 the commission shall publish a notice of finding that the petition  
18 is accepted for consideration. If the accepted petition recommends  
19 the addition of a species to either the list of endangered species or  
20 the list of threatened species, the commission shall include in the  
21 notice that the petitioned species is a candidate species. The  
22 commission shall maintain a list of species which are candidate  
23 species.

24 (b) The commission shall publish and distribute the findings  
25 relating to the petition pursuant to Section 2078.

26 (c) This section shall become operative on January 1, 2017.

27 SEC. 5. Section 2074.6 of the Fish and Game Code is amended  
28 to read:

29 2074.6. (a) The department shall promptly commence a review  
30 of the status of the species concerned in the petition. Within 12  
31 months of the date of publication of a notice of acceptance of a  
32 petition for consideration pursuant to paragraph (2) of subdivision  
33 (e) of Section 2074.2, the department shall produce and make  
34 publicly available on the department’s Internet Web site a written  
35 peer reviewed report, based upon the best scientific information  
36 available to the department, which indicates whether the petitioned  
37 action is warranted, which includes a preliminary identification of  
38 the habitat that may be essential to the continued existence of the  
39 species, and which recommends management activities and other  
40 recommendations for recovery of the species. The department shall

1 amend the draft status review report as appropriate to incorporate  
2 scientific information from the independent peer review. The  
3 revised report shall be posted on the department's Internet Web  
4 site for a minimum of 30 days for public review prior to the hearing  
5 scheduled pursuant to Section 2075. The commission may grant  
6 an extension of up to six months if the director determines an  
7 extension is necessary to complete independent peer review of the  
8 report, and to provide a minimum of 30 days for public review of  
9 the peer reviewed report prior to the public hearing specified in  
10 Section 2075.

11 (b) This section shall remain in effect only until January 1, 2017,  
12 and as of that date is repealed, unless a later enacted statute, that  
13 is enacted before January 1, 2017, deletes or extends that date.

14 SEC. 6. Section 2074.6 is added to the Fish and Game Code,  
15 to read:

16 2074.6. (a) The department shall promptly commence a review  
17 of the status of the species concerned in the petition. Within 12  
18 months of the date of publication of a notice of acceptance of a  
19 petition for consideration by the commission pursuant to paragraph  
20 (2) of subdivision (a) of Section 2074.2, the department shall  
21 provide a written report to the commission, based upon the best  
22 scientific information available to the department, which indicates  
23 whether the petitioned action is warranted, which includes a  
24 preliminary identification of the habitat that may be essential to  
25 the continued existence of the species, and which recommends  
26 management activities and other recommendations for recovery  
27 of the species.

28 (b) This section shall become operative on January 1, 2017.

29 SEC. 7. Section 2074.8 of the Fish and Game Code is amended  
30 to read:

31 2074.8. (a) This article does not impose any duty or obligation  
32 for, or otherwise require, the commission or the department to  
33 undertake independent studies or other assessments of any species  
34 when reviewing a petition and its attendant documents and  
35 comments. However, the department shall seek independent  
36 scientific peer review of the department's status report. The director  
37 may approve an extension of time for completion of the status  
38 report if necessary for the purposes of obtaining independent peer  
39 review pursuant to Section 2074.6.

1 (b) This section shall remain in effect only until January 1, 2017,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2017, deletes or extends that date.

4 SEC. 8. Section 2074.8 is added to the Fish and Game Code,  
5 to read:

6 2074.8. (a) This article does not impose any duty or obligation  
7 for, or otherwise require, the commission or the department to  
8 undertake independent studies or other assessments of any species  
9 when reviewing a petition and its attendant documents and  
10 comments.

11 (b) This section shall become operative on January 1, 2017.

12 SEC. 9. Section 2075.5 of the Fish and Game Code is amended  
13 to read:

14 2075.5. (a) At the meeting scheduled pursuant to Section 2075,  
15 the commission shall hold a public hearing on the petition and  
16 shall receive information, written or otherwise, and oral testimony.  
17 After the conclusion of oral testimony from department staff, the  
18 petitioner, or any other persons, the commission may close the  
19 public hearing and the administrative record for the department's  
20 decision pursuant to this section.

21 (b) After the commission closes the public hearing the  
22 administrative record for the commission's decision is closed and  
23 it shall not be reopened except as provided in subdivision (c). Once  
24 the public hearing is closed a person shall not submit further  
25 information to the department for consideration on that petition  
26 and the commission shall not accept any further information for  
27 consideration on that petition except as provided in subdivision  
28 (c).

29 (c) The administrative record for the commission's decision  
30 pursuant to this section shall not be reopened once the department  
31 closes the public hearing unless one of the following occurs prior  
32 to the commission's decision:

33 (1) There is a change in state or federal law or regulation that  
34 has a direct and significant impact on the commission's  
35 determination as to whether the petitioned action is warranted.

36 (2) The commission determines that it requires further  
37 information to evaluate whether the petitioned action is warranted.  
38 If the commission makes that determination during its deliberation,  
39 the commission may request, on the record at the scheduled  
40 meeting or at a continued meeting, further information on any

1 issue relevant to making its determination as to whether the  
2 petitioned action is warranted. Any request by the commission  
3 pursuant to this paragraph shall specify a date by which the  
4 information must be submitted to the commission and shall serve  
5 to reopen the administrative record for the limited purpose of  
6 receiving further information relating to the issues specified by  
7 the commission in the request. Commission and department staff,  
8 the petitioner, or any other person may submit information in  
9 response to a request pursuant to this paragraph.

10 (d) The commission, in its discretion, may either close the public  
11 hearing and continue the meeting on the petition for the purpose  
12 of deliberation or continue both the public hearing and the meeting  
13 on the petition to a subsequent date which is no later than 90 days  
14 after the meeting scheduled pursuant to Section 2075, and subject  
15 to applicable notice and agenda requirements. If the commission  
16 closes the public hearing but continues the meeting for the purpose  
17 of deliberation, a person shall not submit, and the commission  
18 shall not receive, further information relating to the petition except  
19 as provided in subdivision (c).

20 (e) At the meeting scheduled pursuant to Section 2075, or at a  
21 continued meeting scheduled pursuant to subdivision (d), the  
22 commission shall make one of the following findings:

23 (1) The petitioned action is not warranted, in which case the  
24 finding shall be entered in the public records of the commission  
25 and the petitioned species shall be removed from the list of  
26 candidate species maintained pursuant to Section 2074.2.

27 (2) The petitioned action is warranted, in which case the  
28 commission shall publish a notice of that finding and a notice of  
29 proposed rulemaking pursuant to Section 11346.4 of the  
30 Government Code, to add the species to, or remove the species  
31 from, the list of endangered species or the list of threatened species.  
32 Further proceedings of the commission on the petitioned action  
33 shall be made in accordance with Chapter 3.5 (commencing with  
34 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
35 Code.

36 (f) This section shall remain in effect only until January 1, 2017,  
37 and as of that date is repealed, unless a later enacted statute, that  
38 is enacted before January 1, 2017, deletes or extends that date.

39 SEC. 10. Section 2075.5 is added to the Fish and Game Code,  
40 to read:

1 2075.5. (a) At the meeting scheduled pursuant to Section 2075,  
2 the commission shall make one of the following findings:

3 (1) The petitioned action is not warranted, in which case the  
4 finding shall be entered in the public records of the commission  
5 and the petitioned species shall be removed from the list of  
6 candidate species maintained pursuant to Section 2074.2.

7 (2) The petitioned action is warranted, in which case the  
8 commission shall publish a notice of that finding and a notice of  
9 proposed rulemaking pursuant to Section 11346.4 of the  
10 Government Code to add the species to, or remove the species  
11 from, the list of endangered species or the list of threatened species.  
12 Further proceedings of the commission on the petitioned action  
13 shall be made in accordance with Chapter 3.5 (commencing with  
14 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
15 Code.

16 (b) This section shall become operative on January 1, 2017.

17 SEC. 11. Section 2087 of the Fish and Game Code is amended  
18 to read:

19 2087. (a) Accidental take of candidate, threatened, or  
20 endangered species resulting from an act that occurs on a farm or  
21 a ranch in the course of otherwise lawful routine and ongoing  
22 agricultural activities is not prohibited by this chapter.

23 (b) For purposes of this section, “accidental” means unintended  
24 or unforeseen.

25 (c) This section shall remain in effect only until January 1, 2020,  
26 and as of that date is repealed, unless a later enacted statute, that  
27 is enacted before January 1, 2020, deletes or extends that date.

28 SEC. 12. Section 3517 is added to the Fish and Game Code,  
29 to read:

30 3517. (a) It is the policy of the state that, when agricultural  
31 lands are being idled in order to provide water for transfer, the  
32 growth of nonirrigated cover crops or natural vegetation for  
33 waterfowl, upland game bird, and other wildlife habitat, carbon  
34 sequestration, and air quality benefits shall be encouraged on those  
35 lands if the cover vegetation does not cause more than a de minimis  
36 or insignificant change in the amount of water being transferred.

37 (b) A state agency shall not prohibit, condition, penalize, or  
38 otherwise restrict the establishment of upland nesting cover or  
39 associated waterfowl brood habitat for the purpose of propagating

1 waterfowl, upland game birds, or other birds protected pursuant  
2 to this code without the concurrence of the department.

3 SEC. 13. Section 1018 is added to the Water Code, to read:

4 1018. It is the policy of the state that, when agricultural lands  
5 are being idled in order to provide water for transfer pursuant to  
6 this division, the growth of nonirrigated cover crops or natural  
7 vegetation for waterfowl, upland game bird, and other wildlife  
8 habitat, carbon sequestration, and air quality benefits shall be  
9 encouraged on those lands if the cover vegetation does not cause  
10 more than a de minimis or insignificant change in the amount of  
11 water being transferred.

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