

AMENDED IN ASSEMBLY AUGUST 12, 2013

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

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

February 22, 2013

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~~ *Section* 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 *amend Section 482 of, and to* add Section 1018-~~to~~ *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.

The California Constitution establishes the Fish and Game Commission and provides for the delegation to the commission of powers relating to the protection and propagation of fish and game, including the conservation and enhancement of bird habitat.

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.~~ *The bill would require the department to annually provide an opportunity for licensed hunters to comment and make recommendations on the public hunting programs, including anticipated habitat conditions in the hunting areas on Type A and Type B Wildlife Areas, as defined under the commission's regulations, through public meetings or other means as the department deems appropriate. In complying with these provisions, the bill would authorize the department to hold regional meetings on its hunting programs for several different wildlife areas.*

(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)~~

~~(4) 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 regulates water transfers and, among other things, allows a permittee or licensee to temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.~~

~~This bill would declare it is the policy of the state that, *would*, when agricultural lands are being idled in order to provide water for transfer, the growth of transfer and an amount of water is determined to be made available by that idling, require landowners to be encouraged to cultivate or retain nonirrigated cover crops or natural vegetation for to provide waterfowl, upland game bird, and other wildlife habitat, carbon sequestration, and air quality benefits is required to be encouraged on those lands, as specified.~~

~~(5) Existing law requires the Department of Water Resources to prepare a water transfer guide which is required to include specified information.~~

~~This bill would revise the contents of the water transfer guide to include fish and wildlife issues related to the transfer of water in preparing or revising the water transfer guide.~~

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) The moneys collected from agricultural leases entered into
10 pursuant to subdivision (a) shall be deposited by the department
11 into the Wildlife Restoration Fund and, upon appropriation by the
12 Legislature, may be used to support the management, maintenance,
13 restoration, and operations of department-managed lands.

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

16
17 Article 2.5. Bird Habitat Conservation
18

19 ~~1758. (a) In the annual work plans for the department’s wildlife
20 management areas, the department shall identify those lands,
21 including a description of proposed habitat management areas,
22 which it shall maintain for the purpose of restoring or enhancing
23 upland nesting cover and associated waterfowl brood habitat to
24 support the production of resident waterfowl and upland game
25 birds.~~

26 ~~(b) For lands and proposed habitat management activities
27 identified and described in subdivision (a), the department, in the
28 manner it deems appropriate, shall annually solicit comments and
29 recommendations from the upland game bird advisory committee
30 described in subdivision (c) of Section 3684.~~

31 *1758. The department shall annually provide an opportunity
32 for licensed hunters to comment and make recommendations on
33 the public hunting programs, including anticipated habitat
34 conditions in the hunting areas on Type A and Type B Wildlife
35 Areas, as defined under the commission’s regulations, through
36 public meetings or other means as the department deems
37 appropriate. In complying with this section, the department may*

1 *hold regional meetings on its hunting programs for several*
2 *different wildlife areas.*

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

5 2074.2. (a) At the meeting scheduled pursuant to Section 2074,
6 the commission shall hold a public hearing on the petition and
7 shall receive information, written or otherwise, and oral testimony.
8 After the conclusion of oral testimony from the commission and
9 department staff, the petitioner, or any other persons, the
10 commission may close the public hearing and administrative record
11 for the commission's decision pursuant to this section.

12 (b) After the commission closes the public hearing, the
13 administrative record for the commission's decision is closed and
14 it shall not be reopened except as provided in subdivision (c). Once
15 the public hearing is closed, no person shall submit further
16 information to the commission for consideration on that petition
17 and the commission shall not accept any further information for
18 consideration on that petition except as provided in subdivision
19 (c).

20 (c) The administrative record for the commission's decision
21 pursuant to this section shall not be reopened once the commission
22 closes the public hearing unless one of the following occurs prior
23 to the commission's decision:

24 (1) There is a change in state or federal law or regulation that
25 has a direct and significant impact on the commission's
26 determination as to whether the petition provides sufficient
27 information to indicate that the petitioned action may be warranted.

28 (2) The commission determines that it requires further
29 information to evaluate whether the petition provides sufficient
30 information to indicate that the petitioned action may be warranted.
31 If the commission makes that determination during its deliberation,
32 the commission may request, on the record at the scheduled
33 meeting or at a continued meeting, further information on any
34 issue relevant to making its determination as to whether the petition
35 provides sufficient information to indicate that the petitioned action
36 may be warranted. Any request by the commission pursuant to
37 this paragraph shall specify a date by which the information must
38 be submitted to the commission and shall serve to reopen the
39 administrative record for the limited purpose of receiving further
40 information relating to the issues specified by the commission in

1 the request. Commission and department staff, the petitioner, or
2 any other person may submit information in response to a request
3 pursuant to this paragraph.

4 (d) In its discretion, the commission may either close the public
5 hearing and continue the meeting on the petition for the purpose
6 of deliberation or continue both the public hearing and the meeting
7 on the petition to a subsequent date, which shall be no later than
8 90 days after the meeting scheduled pursuant to Section 2074, and
9 subject to applicable notice and agenda requirements. If the
10 commission closes the public hearing but continues the meeting
11 for the purpose of deliberation, a person shall not submit, and the
12 commission shall not receive, further information relating to the
13 petition except as provided in subdivision (c).

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

20 (1) If the commission finds that the petition does not provide
21 sufficient information to indicate that the petitioned action may
22 be warranted, the commission shall publish a notice of finding that
23 the petition is rejected, including the reasons why the petition is
24 not sufficient.

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

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

36 (g) 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. 4. Section 2074.2 is added to the Fish and Game Code,
40 to read:

1 2074.2. (a) At the scheduled meeting, the commission shall
2 consider the petition, the department's written report, and
3 comments received, and the commission shall make and enter in
4 its public record one of the following findings:

5 (1) If the commission finds that the petition does not provide
6 sufficient information to indicate that the petitioned action may
7 be warranted, the commission shall publish a notice of finding that
8 the petition is rejected, including the reasons why the petition is
9 not sufficient.

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

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

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

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

24 2074.6. (a) The department shall promptly commence a review
25 of the status of the species concerned in the petition. Within 12
26 months of the date of publication of a notice of acceptance of a
27 petition for consideration pursuant to paragraph (2) of subdivision
28 (e) of Section 2074.2, the department shall produce and make
29 publicly available on the department's Internet Web site a written
30 peer reviewed report, based upon the best scientific information
31 available to the department, which indicates whether the petitioned
32 action is warranted, which includes a preliminary identification of
33 the habitat that may be essential to the continued existence of the
34 species, and which recommends management activities and other
35 recommendations for recovery of the species. The department shall
36 amend the draft status review report as appropriate to incorporate
37 scientific information from the independent peer review. The
38 revised report shall be posted on the department's Internet Web
39 site for a minimum of 30 days for public review prior to the hearing
40 scheduled pursuant to Section 2075. The commission may grant

1 an extension of up to six months if the director determines an
2 extension is necessary to complete independent peer review of the
3 report, and to provide a minimum of 30 days for public review of
4 the peer reviewed report prior to the public hearing specified in
5 Section 2075.

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

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

11 2074.6. (a) The department shall promptly commence a review
12 of the status of the species concerned in the petition. Within 12
13 months of the date of publication of a notice of acceptance of a
14 petition for consideration by the commission pursuant to paragraph
15 (2) of subdivision (a) of Section 2074.2, the department shall
16 provide a written report to the commission, based upon the best
17 scientific information available to the department, which indicates
18 whether the petitioned action is warranted, which includes a
19 preliminary identification of the habitat that may be essential to
20 the continued existence of the species, and which recommends
21 management activities and other recommendations for recovery
22 of the species.

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

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

26 2074.8. (a) This article does not impose any duty or obligation
27 for, or otherwise require, the commission or the department to
28 undertake independent studies or other assessments of any species
29 when reviewing a petition and its attendant documents and
30 comments. However, the department shall seek independent
31 scientific peer review of the department’s status report. The director
32 may approve an extension of time for completion of the status
33 report if necessary for the purposes of obtaining independent peer
34 review pursuant to Section 2074.6.

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

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

1 2074.8. (a) This article does not impose any duty or obligation
2 for, or otherwise require, the commission or the department to
3 undertake independent studies or other assessments of any species
4 when reviewing a petition and its attendant documents and
5 comments.

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

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

9 2075.5. (a) At the meeting scheduled pursuant to Section 2075,
10 the commission shall hold a public hearing on the petition and
11 shall receive information, written or otherwise, and oral testimony.
12 After the conclusion of oral testimony from department staff, the
13 petitioner, or any other persons, the commission may close the
14 public hearing and the administrative record for the department's
15 decision pursuant to this section.

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

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

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

31 (2) The commission determines that it requires further
32 information to evaluate whether the petitioned action is warranted.
33 If the commission makes that determination during its deliberation,
34 the commission may request, on the record at the scheduled
35 meeting or at a continued meeting, further information on any
36 issue relevant to making its determination as to whether the
37 petitioned action is warranted. Any request by the commission
38 pursuant to this paragraph shall specify a date by which the
39 information must be submitted to the commission and shall serve
40 to reopen the administrative record for the limited purpose of

1 receiving further information relating to the issues specified by
2 the commission in the request. Commission and department staff,
3 the petitioner, or any other person may submit information in
4 response to a request pursuant to this paragraph.

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

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

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

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

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

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

36 2075.5. (a) At the meeting scheduled pursuant to Section 2075,
37 the commission shall make one of the following findings:

38 (1) The petitioned action is not warranted, in which case the
39 finding shall be entered in the public records of the commission

1 and the petitioned species shall be removed from the list of
2 candidate species maintained pursuant to Section 2074.2.

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

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

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

15 2087. (a) Accidental take of candidate, threatened, or
16 endangered species resulting from an act that occurs on a farm or
17 a ranch in the course of otherwise lawful routine and ongoing
18 agricultural activities is not prohibited by this chapter.

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

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

24 ~~SEC. 12. Section 3517 is added to the Fish and Game Code,~~
25 ~~to read:~~

26 ~~3517. (a) It is the policy of the state that, when agricultural~~
27 ~~lands are being idled in order to provide water for transfer, the~~
28 ~~growth of nonirrigated cover crops or natural vegetation for~~
29 ~~waterfowl, upland game bird, and other wildlife habitat, carbon~~
30 ~~sequestration, and air quality benefits shall be encouraged on those~~
31 ~~lands if the cover vegetation does not cause more than a de minimis~~
32 ~~or insignificant change in the amount of water being transferred.~~

33 ~~(b) A state agency shall not prohibit, condition, penalize, or~~
34 ~~otherwise restrict the establishment of upland nesting cover or~~
35 ~~associated waterfowl brood habitat for the purpose of propagating~~
36 ~~waterfowl, upland game birds, or other birds protected pursuant~~
37 ~~to this code without the concurrence of the department.~~

38 *SEC. 12. Section 482 of the Water Code is amended to read:*

39 482. The department shall prepare a water transfer guide which
40 shall include, but not be limited to, all of the following:

1 (a) A review of existing and appropriate state and federal laws
2 that pertain to water transfers, water markets, or water rights.

3 (b) A list of persons or public agencies throughout the state
4 involved in water management who could be helpful to those
5 seeking assistance to transfer water.

6 (c) Information and resources which could be used to identify
7 potential third-party impacts and mitigation alternatives, including
8 economic, ~~environmental, and~~ or legal issues related to the transfer
9 of water, *and environmental issues, including, but not limited to,*
10 *those described in Section 1018.*

11 (d) A description of the services available to water users from
12 the department.

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

14 1018. ~~It is the policy of the state that, when~~ *When* agricultural
15 lands are being idled in order to provide water for transfer pursuant
16 to this division, ~~the growth of and an amount of water is~~
17 *determined to be made available by that idling, landowners shall*
18 *be encouraged to cultivate or retain nonirrigated cover crops or*
19 *natural vegetation for to provide waterfowl, upland game bird, and*
20 *other wildlife habitat, carbon sequestration, and air quality benefits*
21 ~~shall be encouraged on those lands if the cover vegetation does~~
22 ~~not cause more than a de minimis or insignificant change in the~~
23 ~~amount of water being transferred.~~ *provided that all other water*
24 *transfer requirements are met.*