

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

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**

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

February 22, 2013

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An act to amend ~~Section~~ *Sections* 2087 and 2115.5 of, to amend, repeal, and add Sections 2074.2, 2074.6, 2074.8, and 2075.5 of, to add Section 1745.1 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, 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 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~~ *public outreach*. 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 *and public comment*.

(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) The California Endangered Species Act, until January 1, 2014, provides for the development and implementation of a recovery strategy pilot program for coho salmon.*

*This bill would extend these provisions to January 1, 2017.*

~~(4)~~

(5) Existing law 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, when agricultural lands are being idled in order to provide water for 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 to provide waterfowl, upland game bird, and other wildlife habitat, as specified.

~~(5)~~

(6) 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

1 compatible with the department’s approved management plan for  
2 the area, if available.

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

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

10  
11 Article 2.5. Bird Habitat Conservation

12  
13 1758. The department shall annually provide an opportunity  
14 for licensed hunters to comment and make recommendations on  
15 the public hunting programs, including anticipated habitat  
16 conditions in the hunting areas on Type A and Type B Wildlife  
17 Areas, as defined under the commission’s regulations, through  
18 public meetings or other ~~means as the department deems~~  
19 ~~appropriate~~ *public outreach*. In complying with this section, the  
20 department may hold regional meetings on its hunting programs  
21 for several different wildlife areas.

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

24 2074.2. (a) At the meeting scheduled pursuant to Section 2074,  
25 the commission shall hold a public hearing on the petition and  
26 shall receive information, written or otherwise, and oral testimony.  
27 After the conclusion of oral testimony from the commission and  
28 department staff, the petitioner, or any other persons, the  
29 commission may close the public hearing and administrative record  
30 for the commission’s decision pursuant to this section.

31 (b) After the commission closes the public hearing, the  
32 administrative record for the commission’s decision is closed and  
33 it shall not be reopened except as provided in subdivision (c). Once  
34 the public hearing is closed, no person shall submit further  
35 information to the commission for consideration on that petition  
36 and the commission shall not accept any further information for  
37 consideration on that petition except as provided in subdivision  
38 (c).

39 (c) The administrative record for the commission’s decision  
40 pursuant to this section shall not be reopened once the commission

1 closes the public hearing unless one of the following occurs prior  
2 to the commission's decision:

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

7 (2) The commission determines that it requires further  
8 information to evaluate whether the petition provides sufficient  
9 information to indicate that the petitioned action may be warranted.

10 If the commission makes that determination during its deliberation,  
11 the commission may request, on the record at the scheduled  
12 meeting or at a continued meeting, further information on any  
13 issue relevant to making its determination as to whether the petition  
14 provides sufficient information to indicate that the petitioned action  
15 may be warranted. Any request by the commission pursuant to  
16 this paragraph shall specify a date by which the information must  
17 be submitted to the commission and shall serve to reopen the  
18 administrative record for the limited purpose of receiving further  
19 information relating to the issues specified by the commission in  
20 the request. Commission and department staff, the petitioner, or  
21 any other person may submit information in response to a request  
22 pursuant to this paragraph. *If the commission reopens the record*  
23 *pursuant to this paragraph, it shall provide an opportunity for*  
24 *public comment on the submitted information prior to the issuance*  
25 *of its decision.*

26 (d) In its discretion, the commission may either close the public  
27 hearing and continue the meeting on the petition for the purpose  
28 of deliberation or continue both the public hearing and the meeting  
29 on the petition to a subsequent date, which shall be no later than  
30 90 days after the meeting scheduled pursuant to Section 2074, and  
31 subject to applicable notice and agenda requirements. If the  
32 commission closes the public hearing but continues the meeting  
33 for the purpose of deliberation, a person shall not submit, and the  
34 commission shall not receive, further information relating to the  
35 petition except as provided in subdivision (c).

36 (e) At the meeting scheduled pursuant to Section 2074 or at a  
37 continued meeting scheduled pursuant to subdivision (d), the  
38 commission shall consider the petition, the department's written  
39 report, written comments received, and oral testimony provided

1 during the public hearing, and the commission shall make and  
2 enter in its record one of the following findings:

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

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

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

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

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

24 2074.2. (a) At the scheduled meeting, the commission shall  
25 consider the petition, the department's written report, and  
26 comments received, and the commission shall make and enter in  
27 its public record one of the following findings:

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

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

1 commission shall maintain a list of species which are candidate  
2 species.

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

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

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

8 2074.6. (a) The department shall promptly commence a review  
9 of the status of the species concerned in the petition. Within 12  
10 months of the date of publication of a notice of acceptance of a  
11 petition for consideration pursuant to paragraph (2) of subdivision  
12 (e) of Section 2074.2, the department shall produce and make  
13 publicly available on the department's Internet Web site a *final*  
14 written peer reviewed report, based upon the best scientific  
15 information available to the department, which indicates whether  
16 the petitioned action is warranted, which includes a preliminary  
17 identification of the habitat that may be essential to the continued  
18 existence of the species, and which recommends management  
19 activities and other recommendations for recovery of the species.  
20 ~~The Prior to releasing the final written report, the department~~  
21 ~~shall amend the draft status review report as appropriate to~~  
22 ~~incorporate scientific information from the independent peer review~~  
23 ~~have a draft status review report prepared and independently peer~~  
24 ~~reviewed, and upon receiving the peer reviewers' input, shall~~  
25 ~~evaluate and respond in writing to the independent peer review~~  
26 ~~and shall amend the draft status review report as appropriate.~~ The  
27 revised report shall be posted on the department's Internet Web  
28 site for a minimum of 30 days for public review prior to the hearing  
29 scheduled pursuant to Section 2075. The commission may grant  
30 an extension of up to six months if the director determines an  
31 extension is necessary to complete independent peer review of the  
32 report, and to provide a minimum of 30 days for public review of  
33 the peer reviewed report prior to the public hearing specified in  
34 Section 2075.

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. 6. Section 2074.6 is added to the Fish and Game Code,  
39 to read:

1     2074.6. (a) The department shall promptly commence a review  
2 of the status of the species concerned in the petition. Within 12  
3 months of the date of publication of a notice of acceptance of a  
4 petition for consideration by the commission pursuant to paragraph  
5 (2) of subdivision (a) of Section 2074.2, the department shall  
6 provide a written report to the commission, based upon the best  
7 scientific information available to the department, which indicates  
8 whether the petitioned action is warranted, which includes a  
9 preliminary identification of the habitat that may be essential to  
10 the continued existence of the species, and which recommends  
11 management activities and other recommendations for recovery  
12 of the species.

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

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

16     2074.8. (a) This article does not impose any duty or obligation  
17 for, or otherwise require, the commission or the department to  
18 undertake independent studies or other assessments of any species  
19 when reviewing a petition and its attendant documents and  
20 comments. However, the department shall seek independent  
21 scientific peer review of the department's status report. The director  
22 may approve an extension of time for completion of the status  
23 report if necessary for the purposes of obtaining independent peer  
24 review pursuant to Section 2074.6.

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

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

30     2074.8. (a) This article does not impose any duty or obligation  
31 for, or otherwise require, the commission or the department to  
32 undertake independent studies or other assessments of any species  
33 when reviewing a petition and its attendant documents and  
34 comments.

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

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

38     2075.5. (a) At the meeting scheduled pursuant to Section 2075,  
39 the commission shall hold a public hearing on the petition and  
40 shall receive information, written or otherwise, and oral testimony.



1 After the conclusion of oral testimony from department staff, the  
2 petitioner, or any other persons, the commission may close the  
3 public hearing and the administrative record for the department's  
4 decision pursuant to this section.

5 (b) After the commission closes the public hearing the  
6 administrative record for the commission's decision is closed and  
7 it shall not be reopened except as provided in subdivision (c). Once  
8 the public hearing is closed a person shall not submit further  
9 information to the department for consideration on that petition  
10 and the commission shall not accept any further information for  
11 consideration on that petition except as provided in subdivision  
12 (c).

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

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

20 (2) The commission determines that it requires further  
21 information to evaluate whether the petitioned action is warranted.  
22 If the commission makes that determination during its deliberation,  
23 the commission may request, on the record at the scheduled  
24 meeting or at a continued meeting, further information on any  
25 issue relevant to making its determination as to whether the  
26 petitioned action is warranted. Any request by the commission  
27 pursuant to this paragraph shall specify a date by which the  
28 information must be submitted to the commission and shall serve  
29 to reopen the administrative record for the limited purpose of  
30 receiving further information relating to the issues specified by  
31 the commission in the request. Commission and department staff,  
32 the petitioner, or any other person may submit information in  
33 response to a request pursuant to this paragraph.

34 (d) The commission, in its discretion, may either close the public  
35 hearing and continue the meeting on the petition for the purpose  
36 of deliberation or continue both the public hearing and the meeting  
37 on the petition to a subsequent date which is no later than 90 days  
38 after the meeting scheduled pursuant to Section 2075, and subject  
39 to applicable notice and agenda requirements. If the commission  
40 closes the public hearing but continues the meeting for the purpose

1 of deliberation, a person shall not submit, and the commission  
2 shall not receive, further information relating to the petition except  
3 as provided in subdivision (c).

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

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

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

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

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

25 2075.5. (a) At the meeting scheduled pursuant to Section 2075,  
26 the commission shall make one of the following findings:

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

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

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

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

3 2087. (a) Accidental take of candidate, threatened, or  
4 endangered species resulting from an act that occurs on a farm or  
5 a ranch in the course of otherwise lawful routine and ongoing  
6 agricultural activities is not prohibited by this chapter.

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

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

12 *SEC. 12. Section 2115.5 of the Fish and Game Code is amended*  
13 *to read:*

14 2115.5. This article shall remain in effect only until January  
15 1, ~~2014~~ 2017, and as of that date is repealed, unless a later enacted  
16 statute, which is enacted before January 1, ~~2014~~ 2017, deletes or  
17 extends that date. However, this section does not apply to a  
18 recovery strategy that is approved or implemented pursuant to this  
19 article on or before January 1, ~~2014~~ 2017, and those recovery  
20 strategies, and any permits or memoranda of understanding relating  
21 thereto, shall remain effective as if this article had not been  
22 repealed.

23 ~~SEC. 12.~~

24 *SEC. 13.* Section 482 of the Water Code is amended to read:

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

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

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

32 (c) Information and resources which could be used to identify  
33 potential third-party impacts and mitigation alternatives, including  
34 economic or legal issues related to the transfer of water, and  
35 environmental issues, including, but not limited to, those described  
36 in Section 1018.

37 (d) A description of the services available to water users from  
38 the department.

39 ~~SEC. 13.~~

40 *SEC. 14.* Section 1018 is added to the Water Code, to read:

1 1018. When agricultural lands are being idled in order to  
2 provide water for transfer pursuant to this division, and an amount  
3 of water is determined to be made available by that idling,  
4 landowners shall be encouraged to cultivate or retain nonirrigated  
5 cover crops or natural vegetation to provide waterfowl, upland  
6 game bird, and other wildlife habitat, provided that all other water  
7 transfer requirements are met.

O