

Senate Bill No. 749

Passed the Senate September 11, 2013

Secretary of the Senate

Passed the Assembly September 11, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend 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, 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 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.

(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.

(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.

The people of the State of California do enact as follows:

SECTION 1. Section 1745.1 is added to the Fish and Game Code, to read:

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

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

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

Article 2.5. Bird Habitat Conservation

1758. The department shall 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 public outreach. In complying with this section, the department may hold regional meetings on its hunting programs for several different wildlife areas.

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

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

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

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

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

(2) The commission determines that it requires further information to evaluate whether the petition provides sufficient information to indicate that the petitioned action may be warranted. If the commission makes that determination during its deliberation, the commission may request, on the record at the scheduled meeting or at a continued meeting, further information on any issue relevant to making its determination as to whether the petition provides sufficient information to indicate that the petitioned action may be warranted. Any request by the commission pursuant to this paragraph shall specify a date by which the information must be submitted to the commission and shall serve to reopen the administrative record for the limited purpose of receiving further information relating to the issues specified by the commission in the request. Commission and department staff, the petitioner, or any other person may submit information in response to a request pursuant to this paragraph. If the commission reopens the record pursuant to this paragraph, it shall provide an opportunity for public

comment on the submitted information prior to the issuance of its decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

2074.6. (a) The department shall promptly commence a review of the status of the species concerned in the petition. Within 12 months of the date of publication of a notice of acceptance of a petition for consideration pursuant to paragraph (2) of subdivision (e) of Section 2074.2, the department shall produce and make publicly available on the department's Internet Web site a final written peer reviewed report, based upon the best scientific information available to the department, which indicates whether the petitioned action is warranted, which includes a preliminary identification of the habitat that may be essential to the continued existence of the species, and which recommends management activities and other recommendations for recovery of the species. Prior to releasing the final written report, the department shall have a draft status review report prepared and independently peer reviewed, and upon receiving the peer reviewers' input, shall evaluate and respond in writing to the independent peer review and shall amend the draft status review report as appropriate. The

revised report shall be posted on the department's Internet Web site for a minimum of 30 days for public review prior to the hearing scheduled pursuant to Section 2075. The commission may grant an extension of up to six months if the director determines an extension is necessary to complete independent peer review of the report, and to provide a minimum of 30 days for public review of the peer reviewed report prior to the public hearing specified in Section 2075.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The commission determines that it requires further information to evaluate whether the petitioned action is warranted. If the commission makes that determination during its deliberation, the commission may request, on the record at the scheduled meeting or at a continued meeting, further information on any issue relevant to making its determination as to whether the petitioned action is warranted. Any request by the commission pursuant to this paragraph shall specify a date by which the

information must be submitted to the commission and shall serve to reopen the administrative record for the limited purpose of receiving further information relating to the issues specified by the commission in the request. Commission and department staff, the petitioner, or any other person may submit information in response to a request pursuant to this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved _____, 2013

Governor