

**ASSEMBLY BILL**

**No. 1704**

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**Introduced by Assembly Member Dodd**

January 25, 2016

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An act to amend Sections 1228.3, 1228.6, and 1229.1 of, and to repeal and add Section 1229 of, the Water Code, relating to water rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1704, as introduced, Dodd. Water rights.

Existing law requires applicants for appropriation of water for small domestic, small irrigation, or livestock stockpond use to register with the State Water Resources Control Board, as specified. Existing law requires the registration to include a certification that the registrant has contacted a representative of the Department of Fish and Wildlife and has agreed to comply with conditions set forth by the Department of Fish and Wildlife.

This bill would, instead, require the registrant to provide a copy of the registrant's registration form to the Department of Fish and Wildlife and agree to general conditions, as specified.

Existing law requires the board to establish general conditions to which all appropriations of water for small domestic, small irrigation, and livestock stockpond use are subject.

This bill would require the board to consult with the Department of Fish and Wildlife in establishing these general conditions and include in the general conditions compliance with certain Fish and Game Code requirements applicable to the diversion of water.

Under existing law, the board is not required to adopt general conditions for small irrigation use until the board determines that funds

are available for that purpose and forbids registration for small irrigation use until these general conditions are established.

This bill would, instead, require the board to adopt general conditions for small irrigation use meeting certain timelines, and would specify certain of those general conditions. The bill would impose certain fees for these purposes.

Existing law does not apply the conditions appropriating water for small domestic, small irrigation, and livestock stockpond use to certain stream segments.

This bill would, instead, permit the board to issue and renew appropriations on these stream segments if the registration is consistent with certain requirements established by the Director of Fish and Wildlife.

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 1228.3 of the Water Code is amended to  
2     read:  
3     1228.3. (a) Registration of water use pursuant to this article  
4     shall be made upon a form prescribed by the board. The registration  
5     form shall set forth all of the following:  
6         (1) The name and post office address of the registrant.  
7         (2) The source of water supply.  
8         (3) The nature and amount of the proposed use.  
9         (4) The proposed place of diversion.  
10        (5) The place where it is intended to use the water.  
11        (6) The time for completion of construction of diversion works  
12     and for complete application of the water to the proposed use.  
13        (7) A certification that the registrant ~~has contacted a~~  
14     ~~representative of the Department of Fish and Wildlife designated~~  
15     ~~by that department for that purpose, has provided information to~~  
16     ~~that department that is set forth in the registration form, and has~~  
17     ~~agreed to comply with all lawful conditions, including, but not~~  
18     ~~limited to, conditions upon the construction and operation of~~  
19     ~~diversion works, required by the Department of Fish and Wildlife.~~  
20     ~~The certification shall include a copy of any conditions required~~  
21     ~~by the Department of Fish and Wildlife pursuant to this paragraph.~~  
22     *has provided a copy of the completed registration form to a*

1 *representative of the Department of Fish and Wildlife designated*  
2 *by the department for this purpose and agrees to comply with*  
3 *general conditions in accordance with Section 1228.6.*

4 (8) Any other information that may reasonably be required by  
5 the board.

6 (b) Registration of water use shall be deemed completed on the  
7 date that the form, executed in substantial compliance with the  
8 requirements of this section, and the registration fee specified in  
9 Section 1525 are received by the board.

10 (c) The board shall issue monthly a list of registrations filed  
11 under this article during the preceding calendar month. This list  
12 shall contain the information required by paragraphs (1) to (6),  
13 inclusive, of subdivision (a). The list shall set forth a date prior to  
14 which an interested person may file a written protest in opposition  
15 to the approval of a stockpond registration. That date shall be not  
16 later than 30 days from the date on which the list is issued. The  
17 board shall mail the monthly list of registrations filed to a person  
18 who requests the list.

19 (d) Prior to the date set forth on the list required under  
20 subdivision (c), an interested person may file with the board a  
21 written protest in opposition to the approval of a stockpond  
22 registration. The protest shall clearly set forth the protestant's  
23 objections to the registered use based on interference with prior  
24 rights. The protest shall be served on the registrant by the protestant  
25 by mailing a duplicate copy of the protest to the registrant, or  
26 through service undertaken in another manner determined to be  
27 adequate by the board. The procedures set forth in Article 1.5  
28 (commencing with Section 1345) of Chapter 5 shall be used for  
29 reviewing a protested registration.

30 SEC. 2. Section 1228.6 of the Water Code is amended to read:

31 1228.6. (a) The board~~shall~~ *shall, in consultation with the*  
32 *Department of Fish and Wildlife*, establish, and may from time to  
33 time revise, reasonable general conditions to which all  
34 appropriations made pursuant to this article shall be subject. The  
35 conditions shall include, but shall not be limited to, the following:

36 (1) The appropriation is subject to prior rights.

37 (2) ~~All conditions lawfully required by the Department of Fish~~  
38 ~~and Wildlife are conditions upon the appropriations. General~~  
39 ~~conditions applicable to the diversion of water as required by the~~  
40 ~~Department of Fish and Wildlife to comply with the requirements~~

1 *in Chapter 6 (commencing with Section 1600) of Division 2 of the*  
2 *Fish and Game Code.*

3 (3) Diversion works shall be constructed and water applied to  
4 beneficial use with due diligence.

5 (4) Registration shall be renewed and water use reported  
6 pursuant to law and to the rules of the board.

7 (b) Immediately upon registration pursuant to Section 1228.3,  
8 renewal of registration pursuant to Section 1228.5, or amended  
9 registration pursuant to Section 1228.7, the board shall provide  
10 the registrant with a written document setting forth the conditions  
11 required by this section, and the perfection and exercise of rights  
12 acquired pursuant to this article shall at all times be subject to those  
13 conditions.

14 (c) The conditions required by this section shall be deemed  
15 “terms and conditions” within the meaning of Section 1825 and  
16 the expression of legislative intent contained in that section shall  
17 be applicable thereto. The authority of the board to enforce the  
18 terms and conditions of permits and licenses to appropriate water,  
19 and to prevent the unlawful diversion of water, including, but not  
20 limited to, provisions regarding cease and desist orders and the  
21 revocation of permits and licenses, shall be applicable to  
22 appropriations initiated or perfected pursuant to this article.

23 SEC. 3. Section 1229 of the Water Code is repealed.

24 ~~1229. (a) The board is not required to adopt general conditions~~  
25 ~~for small irrigation use pursuant to subdivision (a) of Section~~  
26 ~~1228.6 until the board determines that funds are available for that~~  
27 ~~purpose.~~

28 ~~(b) A registration for small irrigation use pursuant to this article~~  
29 ~~is not authorized until the board establishes general conditions for~~  
30 ~~small irrigation use pursuant to subdivision (a) of Section 1228.6~~  
31 ~~to protect instream beneficial uses.~~

32 ~~(c) The board may establish general conditions for some~~  
33 ~~methods of diversion or categories of small irrigation use before~~  
34 ~~establishing general conditions for other methods or categories,~~  
35 ~~in which case a registration for small irrigation use is authorized~~  
36 ~~only for those methods or categories for which the board has~~  
37 ~~established the general conditions for the protection of instream~~  
38 ~~beneficial uses.~~

39 SEC. 4. Section 1229 is added to the Water Code, to read:

1229. (a) The board, no later than June 30, 2017, shall adopt general conditions for facilities to store water for small irrigation use during high stream flow resulting in the reduction of existing diversions during periods of low stream flow, pursuant to Section 1228.6 and this section, for the following:

(1) Three classes of diversions as follows:

(A) Diversions to off-stream storage reservoirs with points of diversion located on Class I, II, or III streams.

(B) Diversions to on-stream storage reservoirs located on Class II or Class III streams, except streams within the area described in paragraph (1) of subdivision (a) of Section 1259.4.

(C) Diversions to on-stream storage reservoirs located on Class III streams within the area described in paragraph (1) of subdivision (a) of Section 1259.4, which shall be deemed to adequately address the principles described in Section 2.2 of the North Coast Instream Flows Policy adopted by the board on October 22, 2013, and any subsequent amendments.

(2) (A) Diversions from watersheds that support salmonid fisheries and from drainage areas of one square mile or less shall be subject to the following general conditions:

(i) Diversions from drainage areas greater than 0.50 square miles but no more than one square mile shall occur only from November 1 to March 31 of each year and only when stream flow exceeds the February median flow at the point of diversion.

(ii) Diversions from drainage areas greater than 0.25 square miles but no more than 0.50 square miles shall occur only when stream flow exceeds the February median flow at the point of diversion.

(iii) Diversions from drainage areas 0.25 square miles or less may occur without season of diversion or minimum bypass requirements.

(B) No diversion under this paragraph may result in a cumulative stream flow depletion at the one square mile drainage that exceeds 10 percent of the average annual volume of stream flow.

(3) The following shall be included in the general conditions for facilities to store water for small irrigation use adopted pursuant to this subdivision:

(A) No water shall be diverted or used under the registration, and no construction related to the diversion shall commence, until

1 the applicant has obtained and is in compliance with all necessary  
2 permits and other approvals required by other agencies.

3 (B) Pursuant to Sections 100 and 275 and the common law  
4 public trust doctrine, all appropriations made under this section,  
5 including the method of diversion, purpose of water use, and  
6 quantity of water diverted, are subject to the continuing authority  
7 of the board in accordance with law and in the interest of the public  
8 welfare to protect public trust uses and to prevent waste,  
9 unreasonable use, unreasonable purpose of use, or unreasonable  
10 method of diversion of water.

11 (C) (i) Diversion of water under the appropriation is subject to  
12 prior rights. An applicant may be required to curtail diversion or  
13 release water stored during the most recent collection season if  
14 diversion under the appropriation results in injury to holders of  
15 legal downstream senior water rights.

16 (ii) If the applicant holds collected water in a reservoir, as  
17 defined by Section 6004.5, the applicant may be required to bypass  
18 or release water through, over, or around the dam. If the release  
19 of the collected water would not effectively satisfy the prior  
20 downstream water rights, the applicant may be required to  
21 otherwise compensate the holders of the prior rights for any injury  
22 caused.

23 (D) All appropriations are issued subject to available flows. If  
24 the source contains treated wastewater, water imported from  
25 another stream system, or return flow from other projects, the state  
26 makes no guarantee that the supply will continue.

27 (E) The appropriation does not authorize any act that results in  
28 the taking of a threatened, endangered, or candidate species, or  
29 any act that is now prohibited, or becomes prohibited in the future,  
30 under either the California Endangered Species Act (Chapter 1.5  
31 (commencing with Section 2050) of Division 3 of the Fish and  
32 Game Code) or the federal Endangered Species Act (16 U.S.C.  
33 Section 1531 et seq.).

34 (F) The appropriation is subject to the applicable board water  
35 measurement and reporting regulations.

36 (b) The board shall adopt general conditions and, if necessary,  
37 amend existing general conditions for the registration of small  
38 irrigation use for purposes not described in subdivision (a) no later  
39 than June 30, 2018.

1 (c) Notwithstanding subdivision (b) of Section 1228.3 and  
2 Section 1525, the minimum fees for small irrigation use  
3 registrations shall be the following:

4 (1) A registration fee of five hundred dollars (\$500) shall be  
5 paid to the board and a registration fee of five hundred dollars  
6 (\$500) shall be paid to the Department of Fish and Wildlife.

7 (2) A renewal of registration fee of two hundred fifty dollars  
8 (\$250) shall be paid to the board and a renewal of registration fee  
9 of two hundred fifty dollars (\$250) shall be paid to the Department  
10 of Fish and Wildlife.

11 SEC. 5. Section 1229.1 of the Water Code is amended to read:

12 1229.1. ~~(a) This article does not apply to~~ *The board may issue*  
13 *and renew registrations on those stream segments for which the*  
14 *Director of Fish and Wildlife establishes proposed streamflow*  
15 *requirements pursuant to Section 10002 of the Public Resources*  
16 *Code, notwithstanding the July 1, 1989, deadline for preparation*  
17 *of the requirements. Code, if the registration includes conditions*  
18 *consistent with the proposed streamflow requirements.*

19 ~~(b) Notwithstanding subdivision (a), this article applies to a~~  
20 ~~registration filed before the Director of Fish and Wildlife~~  
21 ~~establishes proposed streamflow requirements for the source of~~  
22 ~~water supply for the registration. The conditions for renewal under~~  
23 ~~subdivision (c) of Section 1228.5 may include any conditions the~~  
24 ~~Department of Fish and Wildlife determines to be necessary to~~  
25 ~~protect stream-related fish and wildlife resources on a source of~~  
26 ~~water supply for which the Director of Fish and Wildlife has~~  
27 ~~established proposed streamflow requirements pursuant to Section~~  
28 ~~10002 of the Public Resources Code.~~