

AMENDED IN ASSEMBLY MARCH 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## 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 amended, 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~~ *make compliance with certain Fish and Game Code requirements applicable to the diversion of water. water one of these conditions. The bill would also declare that it is the intent of the*

*Legislature that the general conditions simplify the issuance of registrations.*

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 exempts certain stream segments subject to minimum streamflow requirements under another law from these laws authorizing small domestic, small irrigation, and livestock stockpond use to certain stream segments.~~ *of water upon proper registration.*

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:~~ *include instructions on*
- 6 *how the registrant should comply with the general conditions*
- 7 *adopted pursuant to Section 1228.6 and request the following from*
- 8 *the registrant:*
- 9 (1) The name and post office address of the registrant.
- 10 (2) The source of water supply.
- 11 (3) The nature and amount of the proposed use.
- 12 (4) The proposed place of diversion.
- 13 (5) The place where it is intended to use the water.
- 14 (6) The time for completion of construction of diversion works
- 15 and for complete application of the water to the proposed use.

1 (7) A certification that the registrant has provided a copy of the  
2 completed registration form to a representative of the Department  
3 of Fish and Wildlife designated by the department for this purpose  
4 and agrees to comply with general conditions in accordance with  
5 Section 1228.6.

6 (8) Any other information that may reasonably be required by  
7 the board.

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

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

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

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

33 1228.6. (a) (1) The board shall, in consultation with the  
34 Department of Fish and Wildlife, establish, and may from time to  
35 time revise, reasonable general conditions to which all  
36 appropriations made pursuant to this article shall be subject. The  
37 conditions shall include, but shall not be limited to, the following:

38 ~~(1)~~

39 (A) The appropriation ~~is~~ *shall be* subject to prior rights.

40 ~~(2)~~

(B) General conditions *shall be* applicable to the diversion of water as required by the Department of Fish and Wildlife to comply with the requirements in Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. *The general conditions may include requirements applicable only to specific methods of diversion or categories of registration, commensurate with the project's environmental impact. These requirements may include, but shall not be limited to, both of the following:*

(i) *An assessment to avoid potential site-specific impacts on fish and wildlife resources.*

(ii) *Submission of site-specific information.*

~~(3)~~

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

~~(4)~~

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

(2) *It is the intent of the Legislature that the board and the Department of Fish and Wildlife adopt general conditions that simplify the issuance of registrations in a cost-effective and environmentally protective manner, and the regulatory burden of complying with the general conditions be commensurate with the complexity and number of resources potentially affected by the registration.*

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

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

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

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

3 1229. (a) The board, no later than June 30, 2017, shall adopt  
4 general conditions ~~for facilities to that would permit a registrant~~  
5 ~~to construct a facility that would store water for small irrigation~~  
6 ~~use during times of high stream flow resulting in the reduction of~~  
7 ~~existing in exchange for that registrant reducing diversions during~~  
8 periods of low stream flow, pursuant to Section 1228.6 and this  
9 section, for the following:

10 (1) ~~Three classes of diversions as follows:~~

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

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

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

22 (1) (A) *Diversions from coastal streams entering the Pacific*  
23 *Ocean and streams entering the San Francisco Bay to off-stream*  
24 *storage reservoirs or on-stream storage reservoirs located on*  
25 *stream reaches where fish are not present.*

26 (2) ~~(A)~~

27 (B) *Diversions under this paragraph* from watersheds that  
28 support salmonid fisheries and from drainage areas of one square  
29 mile or less shall be subject to the following general conditions:

30 (i) Diversions from drainage areas greater than 0.50 square miles  
31 but no more than one square mile shall occur only from November  
32 1 to March 31 of each year and only when stream flow exceeds  
33 the February median flow at the point of diversion.

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

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

1     ~~(B)~~

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

6     (2) *Diversions from other streams for which, in the judgment*  
7 *of the board, the reduction in existing diversions during low flow*  
8 *periods will result in a benefit to fish and wildlife.*

9     ~~(3) The following shall be included in the general conditions~~  
10 ~~for facilities~~

11     (b) *Facilities* to store water for small irrigation use adopted  
12 pursuant to ~~this subdivision~~; *subdivision (a) are subject to the*  
13 *following general conditions:*

14     ~~(A)~~

15     (1) No water shall be diverted or used under the registration,  
16 and no construction related to the diversion shall commence, until  
17 the applicant has obtained and is in compliance with all necessary  
18 permits and other approvals required by other agencies.

19     ~~(B)~~

20     (2) Pursuant to Sections 100 and 275 and the common law public  
21 trust doctrine, all appropriations made under ~~this section~~,  
22 *subdivision (a)*, including the method of diversion, purpose of  
23 water use, and quantity of water diverted, are subject to the  
24 continuing authority of the board in accordance with law and in  
25 the interest of the public welfare to protect public trust uses and  
26 to prevent waste, unreasonable use, unreasonable purpose of use,  
27 or unreasonable method of diversion of water.

28     ~~(C) (i)~~

29     (3) (A) Diversion of water under the appropriation is subject  
30 to prior rights. An applicant may be required to curtail diversion  
31 or release water stored during the most recent collection season if  
32 diversion under the appropriation results in injury to holders of  
33 legal downstream senior water rights.

34     (ii)

35     (B) If the applicant holds collected water in a reservoir, as  
36 defined by Section 6004.5, the applicant may be required to bypass  
37 or release water through, over, or around the dam. If the release  
38 of the collected water would not effectively satisfy the prior  
39 downstream water rights, the applicant may be required to

1 otherwise compensate the holders of the prior rights for any injury  
2 caused.

3 ~~(D)~~

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

8 ~~(E)~~

9 (5) The appropriation does not authorize any act that results in  
10 the taking of a threatened, endangered, or candidate species, or  
11 any act that is now prohibited, or becomes prohibited in the future,  
12 under either the California Endangered Species Act (Chapter 1.5  
13 (commencing with Section 2050) of Division 3 of the Fish and  
14 Game Code) or the federal Endangered Species Act (16 U.S.C.  
15 Section 1531 et seq.).

16 ~~(F)~~

17 (6) The appropriation is subject to the applicable board water  
18 measurement and reporting regulations.

19 ~~(b)~~

20 (c) The board shall adopt general conditions and, if necessary,  
21 amend existing general conditions for the registration of small  
22 irrigation use for purposes not described in subdivision (a) no later  
23 than June 30, 2018.

24 ~~(e) Notwithstanding subdivision (b) of~~

25 ~~(d) In addition to any fees imposed by the board in accordance~~  
26 ~~with Section 1228.3 and Section 1525, the minimum following~~  
27 ~~fees for small irrigation use registrations shall be the following:~~  
28 ~~paid to the Department of Fish and Wildlife:~~

29 (1) A registration fee of five hundred dollars ~~(\$500) shall be~~  
30 ~~paid to the board and a registration fee of five hundred dollars~~  
31 ~~(\$500) shall be paid to the Department of Fish and Wildlife. (\$500).~~

32 (2) A renewal of registration fee of two hundred fifty dollars  
33 ~~(\$250) shall be paid to the board and a renewal of registration fee~~  
34 ~~of two hundred fifty dollars (\$250) shall be paid to the Department~~  
35 ~~of Fish and Wildlife. (\$250).~~

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

37 1229.1. The board may issue and renew registrations on those  
38 stream segments for which the Director of Fish and Wildlife  
39 establishes proposed streamflow requirements pursuant to Section

- 1 10002 of the Public Resources Code, if the registration includes
- 2 conditions consistent with the proposed streamflow requirements.

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