

AMENDED IN ASSEMBLY MAY 31, 2016  
AMENDED IN ASSEMBLY MARCH 30, 2016  
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~~ *and, for registration for small irrigation use, agree to specified general conditions, as specified: conditions.*

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 *end the application of these general conditions to small irrigation use and would instead require the board to consult*

*board, in consultation with the Department of Fish and Wildlife in establishing these Wildlife, to establish general conditions and make compliance with certain Fish and Game Code requirements specific to small irrigation use, as specified. The bill would require the Department of Fish and Wildlife to adopt general conditions applicable to the diversion of water one of these conditions: water upon determining that funds are available for that purpose. 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 exempts certain stream segments subject to minimum streamflow requirements under another law from these laws authorizing small domestic, small irrigation, and livestock stockpond use 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 include instructions on how the registrant should comply
- 6 with the general conditions adopted pursuant to Section 1228.6 *or*
- 7 *1229, as applicable*, and request the following from the registrant:
- 8 (1) The name and post office address of the registrant.
- 9 (2) The source of water supply.
- 10 (3) The nature and amount of the proposed use.

1 (4) The proposed place of diversion.

2 (5) The place where it is intended to use the water.

3 (6) The time for completion of construction of diversion works  
4 and for complete application of the water to the proposed use.

5 (7) A certification that the registrant has provided a copy of the  
6 completed registration form to a representative of the Department  
7 of Fish and Wildlife designated by the department for this purpose  
8 and agrees to comply with general conditions in accordance with  
9 ~~Section 1228.6.~~ *1228.6 or 1229, as applicable.*

10 (8) Any other information that may reasonably be required by  
11 the board.

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

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

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

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

37 ~~1228.6. (a) (1) The board shall, in consultation with the~~  
38 ~~Department of Fish and Wildlife, establish, and may from time to~~  
39 ~~time revise, reasonable general conditions to which all~~

1 appropriations made pursuant to this article shall be subject. The  
2 conditions shall include, but shall not be limited to, the following:

3 (A) The appropriation shall be subject to prior rights.

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

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

14 (ii) Submission of site-specific information.

15 (iii) Consultation with the Department of Fish and Wildlife  
16 regarding the findings of the site-specific assessments and  
17 information.

18 (iv) Implementation of additional measures the Department of  
19 Fish and Wildlife lawfully deems necessary to avoid site-specific  
20 impacts, identified pursuant to clauses (i) to (iii), inclusive, on fish  
21 and wildlife resources.

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

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

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

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

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

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

11     1228.6. (a) The board shall establish, and may from time to  
12     time revise, reasonable general conditions to which all  
13     ~~appropriations~~ *appropriations, other than small irrigation use,*  
14     made pursuant to this article shall be subject. The conditions shall  
15     include, but shall not be limited to, the following:

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

17     (2) All conditions lawfully required by the Department of Fish  
18     and Wildlife are conditions upon the appropriations.

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

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

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

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

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

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

1 1229. (a) ~~The board,~~ board shall, in consultation with the  
2 Department of Fish and Wildlife, establish and may from time to  
3 time revise, reasonable general conditions for small irrigation  
4 use. The general conditions may include requirements applicable  
5 only to specific methods of diversion or categories of registration,  
6 commensurate with the project's environmental impact. These  
7 conditions shall include, but shall not be limited to, the following:

8 (1) The appropriation shall be subject to prior rights.

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

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

13 (4) The conditions required by the Department of Fish and  
14 Wildlife pursuant to subdivision (b).

15 (b) The Department of Fish and Wildlife shall adopt general  
16 conditions applicable to the diversion of water required by the  
17 Department of Fish and Wildlife to comply with the requirements  
18 in Chapter 6 (commencing with Section 1600) of Division 2 of the  
19 Fish and Game Code, which may include the following:

20 (1) An assessment to avoid potential site-specific impacts on  
21 fish and wildlife resources.

22 (2) Submission of site-specific information.

23 (3) Consultation with the Department of Fish and Wildlife  
24 regarding the findings of site specific-assessments and information.

25 (4) Implementation of additional measures the Department of  
26 Fish and Wildlife lawfully deems necessary to avoid site-specific  
27 impacts, identified pursuant to paragraphs (1) to (3), inclusive,  
28 on fish and wildlife resources.

29 (c) (1) It is the intent of the Legislature that the board and the  
30 Department of Fish and Wildlife adopt general conditions that  
31 simplify the issuance of registrations in a cost-effective and  
32 environmentally protective manner, and the regulatory burden of  
33 complying with the general conditions be commensurate with the  
34 complexity and type of resources potentially affected by the  
35 registration.

36 (2) The Department of Fish and Wildlife is not required to adopt  
37 general conditions for small irrigation use pursuant to this section  
38 until it determines that funds are available for that purpose.

39 (3) The board may continue to approve small irrigation use  
40 appropriations pursuant to any general conditions in effect

1 *pursuant to Section 1228.6 or 1229, as each read on December*  
2 *31, 2016, which shall include any conditions lawfully required by*  
3 *the Department of Fish and Wildlife, before the adoption of general*  
4 *conditions pursuant to this section by the Department of Fish and*  
5 *Wildlife.*

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

12 (1) (A) Diversions from coastal streams entering the Pacific  
13 Ocean and streams entering the San Francisco Bay to off-stream  
14 storage reservoirs or on-stream storage reservoirs located on stream  
15 reaches where fish are not present.

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

19 (i) Diversions from drainage areas greater than 0.50 square miles  
20 but no more than one square mile shall occur only from November  
21 1 to March 31 of each year and only when stream flow exceeds  
22 the February median flow at the point of diversion.

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

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

30 (C) No diversion under this paragraph may result in a cumulative  
31 stream flow depletion at the one square mile drainage that exceeds  
32 10 percent of the average annual volume of stream flow.

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

36 ~~(b)~~

37 (e) Facilities to store water for small irrigation use adopted  
38 pursuant to subdivision ~~(a)~~ (d) are subject to the following general  
39 conditions:

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

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

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

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

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

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

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

38 ~~(e)~~

39 (f) The board shall adopt general conditions and, if necessary,  
40 amend existing general conditions for the registration of small



1 irrigation use for purposes not described in subdivision ~~(a)~~ (d) no  
2 later than June 30, 2018.

3 ~~(d)~~

4 (g) In addition to any fees imposed by the board in accordance  
5 with Section 1228.3 and Section 1525, the following fees for small  
6 irrigation use registrations shall be paid to the Department of Fish  
7 and Wildlife:

8 (1) A registration fee of five hundred dollars (\$500).

9 (2) A renewal of registration fee of two hundred fifty dollars  
10 (\$250).

11 ~~(e)~~

12 (h) Beginning January 1, 2020, the board may periodically adopt  
13 regulations to update the general conditions specified in this  
14 section.

15 ~~(f)~~

16 (i) (1) A registration for small irrigation use pursuant to this  
17 article is not authorized until the board establishes general  
18 conditions for small irrigation use pursuant to ~~subdivision (a) of~~  
19 ~~Section 1228.6~~ and this section.

20 (2) The board may establish general conditions for some  
21 methods of diversion or categories of small irrigation use before  
22 establishing general conditions for other methods or categories,  
23 in which case a registration for small irrigation use is authorized  
24 only for those methods or categories for which the board has  
25 established general conditions for the protection of instream  
26 beneficial uses.

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

28 1229.1. The board may issue and renew registrations on those  
29 stream segments for which the Director of Fish and Wildlife  
30 establishes proposed streamflow requirements pursuant to Section  
31 10002 of the Public Resources Code, if the registration includes  
32 conditions consistent with the proposed streamflow requirements.