

AMENDED IN SENATE AUGUST 8, 2016
AMENDED IN SENATE AUGUST 1, 2016
AMENDED IN SENATE JUNE 15, 2016
AMENDED IN ASSEMBLY APRIL 27, 2016
AMENDED IN ASSEMBLY APRIL 20, 2016
AMENDED IN ASSEMBLY MARCH 28, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1749

Introduced by Assembly Member Mathis
(Coauthors: Assembly Members Harper and Olsen)
(Coauthor: Senator Cannella)

February 2, 2016

An act to add ~~and repeal Section 21080.06 of~~ *Section 21168.11* to the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1749, as amended, Mathis. California Environmental Quality Act: ~~exemption:~~ City of Porterville.

Existing law, the California Environmental Quality Act, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. The act also requires a lead agency to prepare a mitigated negative declaration for a project that may have a

significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. ~~The act exempts from its requirements projects consisting of the construction or expansion of recycled water pipeline and directly related infrastructure within existing rights of way, and directly related groundwater replenishment, if the project does not affect wetlands or sensitive habitat, and where the construction impacts are fully mitigated, and undertaken for the purpose of mitigating drought conditions for which a state of emergency was proclaimed by the Governor on a certain date. The act provides that this exemption remains operative until the state of emergency has expired or until January 1, 2017, whichever occurs first.~~

~~This bill, until January 1, 2021, would exempt from the act's requirements a water treatment project determined by the City of Porterville as the best option based on a certain feasibility study, as provided.~~

This bill would require the lead agency, in certifying the environmental impact report and in granting approvals for a certain water treatment project determined by the City of Porterville based on a certain feasibility study, as specified, to comply with specified procedures, including the concurrent preparation of the record of proceedings and the certification of the record of proceedings within 5 days of the filing of a specified notice.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Porterville.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. ~~Section 21080.06 is added to the Public Resources~~
- 2 ~~Code, to read:~~
- 3 ~~21080.06. (a) This division does not apply to a project that is~~
- 4 ~~determined by the City of Porterville as the best option based on~~
- 5 ~~a feasibility study conducted by the city seeking long-term~~
- 6 ~~solutions to the lack of water in East Porterville. The project may~~
- 7 ~~be one of the following:~~

1 ~~(1) The construction of a series of satellite water treatment~~
2 ~~facilities located adjacent to existing water distribution line.~~

3 ~~(2) The construction of an advanced water recycling treatment~~
4 ~~facility located either adjacent to the city's existing wastewater~~
5 ~~treatment facility or at a preferred location, as determined by the~~
6 ~~results of the city's feasibility study.~~

7 ~~(3) Upgrades to the city's existing wastewater treatment facility~~
8 ~~to allow for tertiary treatment of the city's wastewater.~~

9 ~~(b) This section shall remain in effect only until January 1, 2021,~~
10 ~~and as of that date is repealed, unless a later enacted statute, that~~
11 ~~is enacted before January 1, 2021, deletes or extends that date.~~

12 *SECTION 1. Section 21168.11 is added to the Public Resources*
13 *Code, to read:*

14 *21168.11. (a) For the purposes of this section, the following*
15 *definitions apply:*

16 *(1) "Lead agency" means the City of Porterville.*

17 *(2) "Water treatment project" or "project" means a project*
18 *that is determined by the City of Porterville as the best option*
19 *based on a feasibility study conducted by the city seeking long-term*
20 *solutions to the lack of water in East Porterville. The project may*
21 *be one of the following:*

22 *(A) The construction of a series of satellite water treatment*
23 *facilities in the City of Porterville that are located adjacent to*
24 *existing water distribution lines.*

25 *(B) The construction of an advanced water recycling treatment*
26 *facility in the City of Porterville that is located either adjacent to*
27 *the city's existing wastewater treatment facility or at a preferred*
28 *location, as determined by the results of the city's feasibility study.*

29 *(C) Upgrades to the City of Porterville's existing wastewater*
30 *treatment facility to allow for tertiary treatment of the city's*
31 *wastewater.*

32 *(b) (1) The draft and final environmental impact report for the*
33 *project shall include a notice in not less than 12-point type stating*
34 *the following:*

35
36 *THIS EIR IS SUBJECT TO SECTION 21168.11 OF THE*
37 *PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG*
38 *OTHER THINGS, THAT THE LEAD AGENCY NEED NOT*
39 *CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE*
40 *OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR.*

1 THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR
2 IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION
3 21168.11 OF THE PUBLIC RESOURCES CODE. A COPY OF
4 SECTION 21168.11 OF THE PUBLIC RESOURCES CODE IS
5 INCLUDED IN THE APPENDIX TO THIS EIR.

6

7 (2) The draft environmental impact report and final
8 environmental impact report shall contain, as an appendix, the
9 full text of this section.

10 (3) Within 10 days after the release of the draft environmental
11 impact report, the lead agency shall conduct an informational
12 workshop to inform the public of the key analyses and conclusions
13 of that report.

14 (4) Within 10 days before the close of the public comment
15 period, the lead agency shall hold a public hearing to receive
16 testimony on the draft environmental impact report. A transcript
17 of the hearing shall be included as an appendix to the final
18 environmental impact report.

19 (5) (A) Within five days following the close of the public
20 comment period, a commenter on the draft environmental impact
21 report may submit to the lead agency a written request for
22 nonbinding mediation. The lead agency shall participate in
23 nonbinding mediation with all commenters who submitted timely
24 comments on the draft environmental impact report and who
25 requested the mediation. Mediation conducted pursuant to this
26 paragraph shall end no later than 35 days after the close of the
27 public comment period.

28 (B) A request for mediation shall identify all areas of dispute
29 raised in the comment submitted by the commenter that are to be
30 mediated.

31 (C) The lead agency shall select one or more mediators who
32 shall be retired judges or recognized experts with at least five
33 years experience in land use and environmental law or science,
34 or mediation.

35 (D) A mediation session shall be conducted on each area of
36 dispute with the parties requesting mediation on that area of
37 dispute.

38 (E) The lead agency shall adopt, as a condition of approval,
39 any measures agreed upon by the lead agency and any commenter
40 who requested mediation. A commenter who agrees to a measure

1 *pursuant to this subparagraph shall not raise the issue addressed*
2 *by that measure as a basis for an action or proceeding challenging*
3 *the lead agency's decision to certify the environmental impact*
4 *report or to grant one or more initial project approvals.*

5 *(6) The lead agency need not consider written comments*
6 *submitted after the close of the public comment period, unless*
7 *those comments address any of the following:*

8 *(A) New issues raised in the response to comments by the lead*
9 *agency.*

10 *(B) New information released by the public agency subsequent*
11 *to the release of the draft environmental impact report, such as*
12 *new information set forth or embodied in a staff report, proposed*
13 *permit, proposed resolution, ordinance, or similar documents.*

14 *(C) Changes made to the project after the close of the public*
15 *comment period.*

16 *(D) Proposed conditions for approval, mitigation measures, or*
17 *proposed findings required by Section 21081 or a proposed*
18 *reporting and monitoring program required by paragraph (1) of*
19 *subdivision (a) of Section 21081.6, where the lead agency releases*
20 *those documents subsequent to the release of the draft*
21 *environmental impact report.*

22 *(E) New information that was not reasonably known and could*
23 *not have been reasonably known during the public comment period.*

24 *(7) The lead agency shall file the notice required by subdivision*
25 *(a) of Section 21152 within five days after the last initial project*
26 *approval.*

27 *(c) (1) The lead agency shall prepare and certify the record of*
28 *the proceedings in accordance with this subdivision and in*
29 *accordance with Rule 3.1365 of the California Rules of Court.*

30 *(2) No later than three business days following the date of the*
31 *release of the draft environmental impact report, the lead agency*
32 *shall make available to the public in a readily accessible electronic*
33 *format the draft environmental impact report and all other*
34 *documents submitted to or relied on by the lead agency in the*
35 *preparation of the draft environmental impact report. A document*
36 *prepared by the lead agency after the date of the release of the*
37 *draft environmental impact report that is a part of the record of*
38 *the proceedings shall be made available to the public in a readily*
39 *accessible electronic format within five business days after the*
40 *document is prepared or received by the lead agency.*

1 (3) Notwithstanding paragraph (2), documents submitted to or
2 relied on by the lead agency that were not prepared specifically
3 for the project and are copyright protected are not required to be
4 made readily accessible in an electronic format. For those
5 copyright protected documents, the lead agency shall make an
6 index of these documents available in an electronic format no later
7 than the date of the release of the draft environmental impact
8 report, or within five business days if the document is received or
9 relied on by the lead agency after the release of the draft
10 environmental impact report. The index must specify the libraries
11 or lead agency offices in which hardcopies of the copyrighted
12 materials are available for public review.

13 (4) The lead agency shall encourage written comments on the
14 project to be submitted in a readily accessible electronic format,
15 and shall make any such comment available to the public in a
16 readily accessible electronic format within five days of its receipt.

17 (5) Within seven business days after the receipt of any comment
18 that is not in an electronic format, the lead agency shall convert
19 that comment into a readily accessible electronic format and make
20 it available to the public in that format.

21 (6) The lead agency shall indicate in the record of the
22 proceedings comments received that were not considered by the
23 lead agency pursuant to paragraph (6) of subdivision (b) and need
24 not include the content of the comments as a part of the record.

25 (7) Within five days after the filing of the notice required by
26 subdivision (a) of Section 21152, the lead agency shall certify the
27 record of the proceedings for the approval or determination and
28 shall provide an electronic copy of the record to a party that has
29 submitted a written request for a copy. The lead agency may charge
30 and collect a reasonable fee from a party requesting a copy of the
31 record for the electronic copy, which shall not exceed the
32 reasonable cost of reproducing that copy.

33 (8) Within 10 days after being served with a complaint or a
34 petition for a writ of mandate, the lead agency shall lodge a copy
35 of the certified record of proceedings with the superior court.

36 (9) Any dispute over the content of the record of the proceedings
37 shall be resolved by the superior court. Unless the superior court
38 directs otherwise, a party disputing the content of the record shall
39 file a motion to augment the record at the time it files its initial
40 brief.

1 *(10) The contents of the record of proceedings shall be as set*
2 *forth in subdivision (e) of Section 21167.6.*

3 SEC. 2. The Legislature finds and declares that a special law
4 is necessary and that a general law cannot be made applicable
5 within the meaning of Section 16 of Article IV of the California
6 Constitution because of the unprecedented drought conditions that
7 have resulted in more than 600 homes in the City of Porterville
8 without a functioning domestic water well.

9 SEC. 3. This act is an urgency statute necessary for the
10 immediate preservation of the public peace, health, or safety within
11 the meaning of Article IV of the Constitution and shall go into
12 immediate effect. The facts constituting the necessity are:

13 To ensure the expeditious construction of recycled water
14 treatment facilities and directly related pipelines to mitigate drought
15 conditions for which the Governor has declared a state of
16 emergency, it is necessary for this measure to take effect
17 immediately.