

ASSEMBLY BILL

No. 997

Introduced by Assembly Member Dickerson

February 23, 2001

An act to amend Section 1603 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 997, as introduced, Dickerson. Streambed alteration.

Under existing law, it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the Department of Fish and Game, or use any material from the streambeds, without first notifying the department of that activity. Under existing law, that prohibition does not apply to certain activities, including specified emergency work.

This bill also would exempt from that prohibition the maintenance and operation of existing structures used for irrigation, including diversions and crossings.

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 1603 of the Fish and Game Code is
2 amended to read:
3 1603. (a) It is unlawful for any person to substantially divert
4 or obstruct the natural flow or substantially change the bed,
5 channel, or bank of any river, stream, or lake designated by the

1 department, or use any material from the streambeds, without first
2 notifying the department of that activity, except when the
3 department has been notified pursuant to Section 1601. The
4 department, within 30 days from the date of receipt of that notice,
5 or within the time determined by mutual written agreement, ~~shall~~,
6 when an existing fish or wildlife resource may be substantially
7 adversely affected by that activity, *shall* notify the person of the
8 existence of that fish or wildlife resource together with a
9 description of the fish or wildlife, and shall submit to the person
10 its proposals as to measures necessary to protect fish and wildlife.
11 Upon a determination by the department of the necessity for onsite
12 investigation or upon the request for an onsite investigation by the
13 affected parties, the department shall notify the affected parties
14 that it shall make an onsite investigation of the activity and shall
15 make that investigation before it proposes any measure necessary
16 to protect the fish and wildlife. The department's description of an
17 existing fish or wildlife resource shall be specific and detailed and
18 the department shall make available upon request the information
19 upon which its conclusion is based that the resource may be
20 substantially adversely affected.

21 (b) (1) Within 14 days from the date of receipt of the
22 department's proposals, the affected person shall notify the
23 department in writing whether the proposals are acceptable, except
24 that the time period may be extended by mutual agreement. If the
25 department's proposals are not acceptable to the affected person,
26 the person shall so notify the department. Upon request, the
27 department shall meet with the affected person within seven days
28 from the date of receipt of that notification or by a date that may
29 be mutually agreed upon for the purpose of developing proposals
30 that are acceptable to the department and the affected person.

31 (2) If mutual agreement is not reached at the meeting held
32 pursuant to paragraph (1), a panel of arbitrators shall be
33 established. However, appointment of the panel may be deferred
34 by mutual consent of the parties. The panel shall be established
35 within seven days from the date of that meeting and shall be
36 composed of one representative of the department, one
37 representative of the affected person, and a third person mutually
38 agreed upon or, if no agreement can be reached, the third person
39 shall be appointed in the manner provided by Section 1281.6 of the
40 Code of Civil Procedure. The third person shall act as panel chair.



1 The panel may settle disagreements and make binding decisions
2 regarding fish and wildlife modifications. The arbitration shall be
3 completed within 14 days from the date that the composition of the
4 panel is established, unless the time period is extended by mutual
5 agreement. The expenses of the department representative shall be
6 borne by the department; the expenses of the representative of the
7 person who diverts or obstructs the natural flow, or changes the
8 bed, of any river, stream, or lake, or uses any material from the
9 streambeds shall be borne by that person; and the expenses of the
10 chair of the panel shall be paid one-half by each party.

11 (c) It is unlawful for any person to commence any activity
12 affected by this section until the department has found that it will
13 not substantially adversely affect an existing fish or wildlife
14 resource or until the department's proposals, or the decisions of a
15 panel of arbitrators, have been incorporated into the activity. If the
16 department fails to act within 30 days from the date of the receipt
17 of the notice, the person may commence the activity. The
18 department shall not condition the streambed alteration agreement
19 on the receipt of another state or federal permit.

20 (d) It is unlawful for any person to engage in an activity
21 affected by this section, unless the activity is conducted in
22 accordance with the department's proposals or the decisions of the
23 panel of arbitrators.

24 (e) If an activity involves the routine maintenance and
25 operation of water supply, drainage, flood control, or waste
26 treatment and disposal facilities, notice to and agreement with the
27 department shall not be required subsequent to the initial
28 notification and agreement unless the work as described in the
29 agreement is substantially changed or conditions affecting fish and
30 wildlife resources substantially change and those resources are
31 adversely affected by the activity conducted under the agreement.
32 This subdivision applies in any instance where notice to, and
33 agreement with, the department ~~has been~~ was attained prior to
34 January 1, 1977.

35 (f) (1) Except as provided in paragraph (2), this section does
36 not apply to any of the following projects:

37 (A) Immediate emergency work necessary to protect life or
38 property.

39 (B) Immediate emergency repairs to public service facilities
40 necessary to maintain service as a result of a disaster in a



1 disaster-stricken area in which a state of emergency has been
2 proclaimed by the Governor pursuant to Chapter 7 (commencing
3 with Section 8550) of Division 1 of Title 2 of the Government
4 Code.

5 (C) Emergency projects undertaken, carried out, or approved
6 by a public agency to maintain, repair, or restore an existing
7 highway, as defined in Section 360 of the Vehicle Code, except for
8 a highway designated as an official state scenic highway pursuant
9 to Section 262 of the Streets and Highways Code, within the
10 existing right-of-way of the highway, damaged as a result of fire,
11 flood, storm, earthquake, land subsidence, gradual earth
12 movement, or landslide, within one year of the damage. Work
13 needed in the vicinity above and below a highway may be
14 conducted outside of the existing right-of-way if it is needed to
15 stop ongoing or recurring mudslides, landslides, or erosion that
16 pose an immediate threat to the highway or to restore those
17 roadways damaged by mudslides, landslides, or erosion to their
18 predamage condition and functionality. This subparagraph does
19 not exempt from this section any project undertaken, carried out,
20 or approved by a public agency to expand or widen a highway
21 damaged by fire, flood, storm, earthquake, land subsidence,
22 gradual earth movement, or landslide.

23 (D) *Maintenance and operation of existing structures used for*
24 *irrigation, including diversions and crossings.*

25 (2) The person performing the project shall notify the
26 department within 14 days from the date of commencement of a
27 project exempted by this subdivision.

28 (3) For purposes of this subdivision, “emergency” means an
29 emergency, as defined in Section 21060.3 of the Public Resources
30 Code.

31 (g) The department may enter into agreements with applicants
32 for a term of not more than five years for the performance of
33 activities subject to this section. The terms of the agreement may
34 be renegotiated at any time by mutual consent of the parties. Each
35 agreement shall be renewed automatically by the department at the
36 expiration of its term unless the department determines that there
37 has been a substantial change in conditions. If there is a
38 disagreement between the department and the applicant as to
39 whether there has been a substantial change in conditions, the
40 department and the applicant shall proceed to arbitration pursuant



1 to subdivision (b). The department may charge a fee when the
2 agreement is entered into and for each renewal, but may not charge
3 an annual fee for this purpose.

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