

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 997**

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**Introduced by Assembly Member Dickerson**

February 23, 2001

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

LEGISLATIVE COUNSEL'S DIGEST

AB 997, as amended, 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 *previously permitted* structures used for irrigation *water supply, and drainage* and the maintenance and operation of *existing previously permitted* 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  
6 department, or use any material from the streambeds, without first  
7 notifying the department of that activity, except when the  
8 department has been notified pursuant to Section 1601. The  
9 department, within 30 days from the date of receipt of that notice,  
10 or within the time determined by mutual written agreement, when  
11 an existing fish or wildlife resource may be substantially adversely  
12 affected by that activity, shall notify the person of the existence of  
13 that fish or wildlife resource together with a description of the fish  
14 or wildlife, and shall submit to the person its proposals as to  
15 measures necessary to protect fish and wildlife. Upon a  
16 determination by the department of the necessity for onsite  
17 investigation or upon the request for an onsite investigation by the  
18 affected parties, the department shall notify the affected parties  
19 that it shall make an onsite investigation of the activity and shall  
20 make that investigation before it proposes any measure necessary  
21 to protect the fish and wildlife. The department's description of an  
22 existing fish or wildlife resource shall be specific and detailed and  
23 the department shall make available upon request the information  
24 upon which its conclusion is based that the resource may be  
25 substantially adversely affected.

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

36 (2) If mutual agreement is not reached at the meeting held  
37 pursuant to paragraph (1), a panel of arbitrators shall be  
38 established. However, appointment of the panel may be deferred



1 by mutual consent of the parties. The panel shall be established  
2 within seven days from the date of that meeting and shall be  
3 composed of one representative of the department, one  
4 representative of the affected person, and a third person mutually  
5 agreed upon or, if no agreement can be reached, the third person  
6 shall be appointed in the manner provided by Section 1281.6 of the  
7 Code of Civil Procedure. The third person shall act as panel chair.  
8 The panel may settle disagreements and make binding decisions  
9 regarding fish and wildlife modifications. The arbitration shall be  
10 completed within 14 days from the date that the composition of the  
11 panel is established, unless the time period is extended by mutual  
12 agreement. The expenses of the department representative shall be  
13 borne by the department; the expenses of the representative of the  
14 person who diverts or obstructs the natural flow, or changes the  
15 bed, of any river, stream, or lake, or uses any material from the  
16 streambeds shall be borne by that person; and the expenses of the  
17 chair of the panel shall be paid one-half by each party.

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

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

31 (e) If an activity involves the routine maintenance and  
32 operation of water supply, drainage, flood control, or waste  
33 treatment and disposal facilities, notice to and agreement with the  
34 department shall not be required subsequent to the initial  
35 notification and agreement unless the work as described in the  
36 agreement is substantially changed or conditions affecting fish and  
37 wildlife resources substantially change and those resources are  
38 adversely affected by the activity conducted under the agreement.  
39 This subdivision applies in any instance where notice to, and



1 agreement with, the department was attained prior to January 1,  
2 1977.

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

5 (A) Immediate emergency work necessary to protect life or  
6 property.

7 (B) Immediate emergency repairs to public service facilities  
8 necessary to maintain service as a result of a disaster in a  
9 disaster-stricken area in which a state of emergency has been  
10 proclaimed by the Governor pursuant to Chapter 7 (commencing  
11 with Section 8550) of Division 1 of Title 2 of the Government  
12 Code.

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

31 (D) Maintenance and operation of existing *previously*  
32 *permitted* structures used for irrigation, *water supply, and*  
33 *drainage*.

34 (E) Maintenance and operation of *existing previously permitted*  
35 diversions and crossings.

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



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

4 (g) The department may enter into agreements with applicants  
5 for a term of not more than five years for the performance of  
6 activities subject to this section. The terms of the agreement may  
7 be renegotiated at any time by mutual consent of the parties. Each  
8 agreement shall be renewed automatically by the department at the  
9 expiration of its term unless the department determines that there  
10 has been a substantial change in conditions. If there is a  
11 disagreement between the department and the applicant as to  
12 whether there has been a substantial change in conditions, the  
13 department and the applicant shall proceed to arbitration pursuant  
14 to subdivision (b). The department may charge a fee when the  
15 agreement is entered into and for each renewal, but may not charge  
16 an annual fee for this purpose.

