

AMENDED IN SENATE JUNE 19, 2001

AMENDED IN ASSEMBLY MAY 25, 2001

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

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 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 of existing previously permitted structures used for irrigation, water supply, and drainage, and the maintenance of existing previously permitted diversions and crossings.

The bill would require that a written application for approval of continued operation of existing previously permitted structures used for

irrigation, water supply, drainage, diversions, and crossings be deemed approved if it has not been denied within 30 days of receipt by the department.

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



1 from the date of receipt of that notification or by a date that may
2 be mutually agreed upon for the purpose of developing proposals
3 that are acceptable to the department and the affected person.

4 (2) If mutual agreement is not reached at the meeting held
5 pursuant to paragraph (1), a panel of arbitrators shall be
6 established. However, appointment of the panel may be deferred
7 by mutual consent of the parties. The panel shall be established
8 within seven days from the date of that meeting and shall be
9 composed of one representative of the department, one
10 representative of the affected person, and a third person mutually
11 agreed upon or, if no agreement can be reached, the third person
12 shall be appointed in the manner provided by Section 1281.6 of the
13 Code of Civil Procedure. The third person shall act as panel chair.
14 The panel may settle disagreements and make binding decisions
15 regarding fish and wildlife modifications. The arbitration shall be
16 completed within 14 days from the date that the composition of the
17 panel is established, unless the time period is extended by mutual
18 agreement. The expenses of the department representative shall be
19 borne by the department; the expenses of the representative of the
20 person who diverts or obstructs the natural flow, or changes the
21 bed, of any river, stream, or lake, or uses any material from the
22 streambeds shall be borne by that person; and the expenses of the
23 chair of the panel shall be paid one-half by each party.

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

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

37 (e) If an activity involves the routine maintenance and
38 operation of water supply, drainage, flood control, or waste
39 treatment and disposal facilities, notice to and agreement with the
40 department shall not be required subsequent to the initial



1 notification and agreement unless the work as described in the
2 agreement is substantially changed or conditions affecting fish and
3 wildlife resources substantially change and those resources are
4 adversely affected by the activity conducted under the agreement.
5 This subdivision applies in any instance where notice to, and
6 agreement with, the department was attained prior to January 1,
7 1977.

8 (f) *A written application for approval of continued operation*
9 *of existing previously permitted structures used for irrigation,*
10 *water supply, drainage, diversions, and crossings shall be deemed*
11 *approved if it has not been denied within 30 days of receipt by the*
12 *department.*

13 (g) (1) Except as provided in paragraph (2), this section does
14 not apply to any of the following projects:

15 (A) Immediate emergency work necessary to protect life or
16 property.

17 (B) Immediate emergency repairs to public service facilities
18 necessary to maintain service as a result of a disaster in a
19 disaster-stricken area in which a state of emergency has been
20 proclaimed by the Governor pursuant to Chapter 7 (commencing
21 with Section 8550) of Division 1 of Title 2 of the Government
22 Code.

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



1 (D) Maintenance of existing previously permitted structures
2 used for irrigation, water supply, and drainage.

3 (E) Maintenance of existing previously permitted diversions
4 and crossings.

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

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

11 ~~(g)~~

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

