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**AB-2348 California Winter Rice Habitat Incentive Program.** (2017-2018)

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**Assembly Bill No. 2348**

**CHAPTER 649**

An act to add Article 7.5 (commencing with Section 3469) to Chapter 2 of Part 1 of Division 4 of the Fish and Game Code, relating to wildlife.

[ Approved by Governor September 21, 2018. Filed with Secretary of State September 21, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2348, Aguiar-Curry. California Winter Rice Habitat Incentive Program.

Existing law authorizes the Director of Fish and Wildlife, pursuant to the California Waterfowl Habitat Program, to enter into land use contracts for an initial term of 10 years to conserve waterfowl and waterfowl habitat with nonpublic entities that are owners of record or with lessees of land determined by the director to be important for the conservation of waterfowl, subject to the appropriation of money for that purpose. Under those contracts, the use of the land is restricted for waterfowl conservation and habitat purposes and the Department of Fish and Wildlife makes payments for that restriction. Existing law requires the contract to be recorded by the county recorder, as specified, and, if the land is divested, the successor to the owner or lessee of the land is subject to the contract.

This bill would establish a similar program, to be known as the California Winter Rice Habitat Incentive Program, to authorize the director to enter into contracts for an initial term of 3 years with nonpublic entities that are owners of record or with lessees of productive agricultural rice lands that are winter-flooded and that are determined by the director to be important for the conservation of waterfowl. Under these contracts, the use of the land would be restricted for waterfowl conservation and habitat purposes in a manner that allows for the use of the land for rice farming. The bill would create the California Winter Rice Habitat Incentive Program Account in the Fish and Game Preservation Fund and would make funds deposited in the account available for expenditure, upon appropriation, to the department for purposes of the program. The bill would make available certain moneys appropriated in the Budget Act of 2018 for purposes of this program.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** The Legislature finds and declares all of the following:

(a) California's great Central Valley, encompassing the Sacramento and San Joaquin Valleys and joined by the Bay Delta, was once an expansive complex of permanent and seasonal wetlands. Over 100 years ago, an estimated four million acres of these valuable habitats lined the Central Valley, supporting an estimated 20 million to 40 million waterfowl and countless millions of other shorebirds, wading birds, raptors, and other wildlife.

(b) By the 1970s, the rich ecological wetlands complex in the Central Valley dwindled to less than 250,000 acres, just 5 percent of historic levels.

(c) Habitat improvement in this Critical Conservation Area can make a significant and beneficial conservation impact on waterbird populations in the Pacific Flyway.

(d) The Central Valley is a critical hub to the Pacific Flyway as a major migratory corridor extending from Alaska to South America.

(e) Over the past few decades, winter flooding of California rice lands has created high-quality habitats on approximately 350,000 acres annually. In recent years, the average total amount of winter-flooded rice fields has decreased, and many waterbird conservationists are concerned that this trend will continue.

(f) For waterfowl, the consequences of fewer acres of winter-flooded rice fields is devastating, as the Central Valley Joint Venture has estimated that winter-flooded rice fields provide over 60 percent of the food required by waterfowl in the Sacramento Valley.

(g) Recent studies show that winter-flooded rice fields may also prove to be a valuable tool in improving the salmon populations by demonstrating that growth rates of juvenile salmon reared in these habitats are the highest on record.

(h) Considering the multiple threats facing the region, California should expand its substantial conservation investments designed to help preserve the Pacific Flyway for future generations.

**SEC. 2.** Article 7.5 (commencing with Section 3469) is added to Chapter 2 of Part 1 of Division 4 of the Fish and Game Code, to read:

**Article 7.5. The California Winter Rice Habitat Incentive Program**

**3469.** (a) There is established the California Winter Rice Habitat Incentive Program subject to the requirements of this article.

(b) Subject to appropriation for purposes of this article, the director may enter into contracts with nonpublic entities that are owners of record, or with lessees who have the owners of record execute the contract, of productive agricultural rice lands that are winter-flooded and that are determined by the director to be important for the conservation of waterfowl. The contract shall enforceably restrict the use of the land for the conservation of waterfowl and their habitat in a manner that allows for the use of the land for rice farming consistent with Section 8 of Article XIII of the California Constitution.

(c) The director shall give priority to contracts that have the greatest potential for restoring, enhancing, and protecting high-quality waterfowl habitat, especially that subject to destruction, drastic modification, or significant curtailment of habitat values. The director may give priority to contracts that provide additional environmental cobenefits, including cobenefits to species such as fish or snakes.

(d) (1) Before entering into a contract pursuant to this article, if the land proposed to be subject to the contract is located within five miles of a runway on a military base or international airport, the director shall consult with the applicable branch of the United States military or the operator of the international airport, as applicable.

(2) The department shall develop guidance and protocols regarding consultation conducted pursuant to paragraph (1) that addresses, at a minimum, notification, participation, and a procedure to request the director to reconsider his or her decision to enter into a contract pursuant to this article.

(e) Contracts entered into pursuant to this article are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(f) For purposes of this article, "productive agricultural rice lands that are winter-flooded" means a field that has been farmed to rice at least two of the last three growing seasons and is intentionally maintained in a flooded state for at least 70 days between October 15 and March 15, inclusive, of the following year.

**3469.2.** Each contract shall be for an initial term of three years and shall include the following:

(a) The designation of the owner of record and any lessee, and the legal description and the assessor's parcel number of the land subject to the contract.

(b) An agreement by the owner and any lessee to restore, enhance, and protect the waterfowl habitat character of the described land.

(c) Specification of the amount and date in each year that the payment is to be made by the department to the owner or lessee, which shall be calculated at the rate or rates that the director determines to be fair and reasonable in consideration of the obligations undertaken by the owner or lessee.

(d) A requirement that the owner or lessee do either of the following:

(1) Refund to the state all payments received under the contract plus interest at the legal rate, as specified in Section 3289 of the Civil Code, upon the owner's or lessee's violation of the contract, or any extension thereof, if the director determines that the violation warrants termination of the contract and the director terminates the contract.

(2) Make refunds or accept payment adjustments that the director determines are appropriate, not to exceed the total amount paid by the state to the owner or lessee in the preceding calendar year plus interest at the legal rate, as specified in Section 3289 of the Civil Code, if the director determines that the violation by the owner or lessee does not warrant termination of the contract.

(e) A requirement that the department reduce the amount of any payment to the owner or lessee under subdivision (c) by an amount equal to the portion of any payment under the federal Water Bank Program (16 U.S.C. Sec. 1301 et seq.) that the department determines to be in compensation for the same obligation undertaken by the owner under the water bank program.

(f) In addition to subdivision (e), a requirement that the department reduce the amount of any payment to the owner or lessee under subdivision (c) by an amount equal to the portion of any payment that the department determines to be in compensation for the same obligation undertaken by the owner under any other governmental program.

(g) An authorization for the department to monitor compliance with the contract with the federal Natural Resources Conservation Service, a county agricultural commissioner, or other appropriate agency, entity, or person to monitor compliance with the contract, and a requirement that the owner or lessee allow access for the monitoring.

(h) Any additional provisions that the director determines are desirable to effectuate the purposes of the program or to facilitate its administration.

**3469.4.** If during the contract period the owner or lessee is divested of the use of the waterfowl habitat subject to the contract, the owner or lessee shall notify the department concurrent with that divestment. Any unearned payment shall immediately be refunded by the owner or lessee to the department.

**3469.6.** The director and the owner or lessee may mutually agree to modify the terms and conditions of a contract under this article as the director may determine to be desirable to carry out the purposes of, or to facilitate administration of, the program.

**3469.8.** The California Winter Rice Habitat Incentive Program Account is hereby created in the Fish and Game Preservation Fund. Funds deposited in the California Winter Rice Habitat Incentive Program Account shall be made available for expenditure, upon appropriation by the Legislature, to the department. These funds shall be expended solely for the purposes set forth in this article. An amount that equals not more than 5 percent of the funds allocated for this program may be used to pay the administrative costs of the program and up to 10 percent of funds allocated may be used for planning and monitoring necessary to ensure the success of the program.

**SEC. 3.** Notwithstanding any other law, the amount appropriated pursuant to Provision 4 of Item 3600-001-0001 in the Budget Act of 2018 (Chapter 29 of the Statutes of 2018) shall be available for purposes of the California Winter Rice Habitat Incentive Program.