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|------|------------------|----------------|--------------|-----------------|------------------|--------------|
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AB-256 Wildlife: California Winter Rice Habitat Incentive Program. (2019-2020)

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Assembly Bill No. 256

CHAPTER 420

An act to amend Sections 3469 and 3469.2 of the Fish and Game Code, relating to wildlife.

[Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 256, Aguiar-Curry. Wildlife: California Winter Rice Habitat Incentive Program.

Existing law establishes the California Winter Rice Habitat Incentive Program that authorizes the Director of Fish and Wildlife 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. Existing law provides that, under these contracts, the use of the land is restricted for waterfowl conservation and habitat purposes in a manner that allows for the use of the land for rice farming.

Existing law requires the lessees of the rice lands to have the owners of record execute the contracts and defines "productive agricultural rice lands that are winter-flooded" for these purposes. Existing law requires each contract to include, among other things, an agreement by the owner and any lessee to restore, enhance, and protect the waterfowl habitat character of the described land.

This bill would no longer require the lessees of the rice lands to have the owners of record execute the contracts and would revise the definition of "productive agricultural rice lands that are winter-flooded." The bill would revise that agreement to instead require an agreement by the owner or the lessee to restore, enhance, and protect the waterfowl habitat character of an established number of acres of described land that may be annually rotated provided that the minimum contracted acreage amount is achieved for each of the contracted winter flooding seasons. The bill would also authorize the Department of Fish and Wildlife to enter into agreements with qualified entities that possess demonstrated experience and understanding of California rice farming practices and wildlife-related conservation practices to administer the conservation contracts on behalf of the department.

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

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

SECTION 1. Section 3469 of the Fish and Game Code is amended to read:

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 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 a 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 during each growing season before each of the winter flooding seasons contracted for flooding and is intentionally maintained in a flooded state for at least 70 days between October 15 and March 15, inclusive, of the following year.

(g) To assist implementation of this article, the department may enter into agreements with qualified entities that possess demonstrated experience and understanding of California rice farming practices and wildlife-related conservation practices to administer the conservation contracts on behalf of the department.

SEC. 2. Section 3469.2 of the Fish and Game Code is amended to read:

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 or the lessee, and the legal description and the assessor's parcel number of the land subject to the contract.

(b) An agreement by the owner or the lessee to restore, enhance, and protect the waterfowl habitat character of an established number of acres of described land that may be annually rotated provided that the minimum contracted acreage amount is achieved for each of the contracted winter flooding seasons.

(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.