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AB-717 Water rights: appropriation: small restoration use. (2025-2026)

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Date Published: 03/10/2025 09:00 PM

AMENDED IN ASSEMBLY MARCH 10, 2025

CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 717

Introduced by Assembly Member Aguiar-Curry

February 14, 2025

~~An act to amend Section 1229.1 of the Water Code, relating to water.~~ *An act to amend Sections 1228.1, 1228.3, 1228.5, and 1229.1 of the Water Code, relating to water rights.*

LEGISLATIVE COUNSEL'S DIGEST

AB 717, as amended, Aguiar-Curry. Water rights: ~~small irrigation use.~~ *appropriation: small restoration use.*

Existing law, the Water Rights Permitting Reform Act of 1988, authorizes any person to obtain a right to appropriate water for a small domestic, small irrigation, or livestock stockpond use, as defined, upon registering the use with the State Water Resources Control Board, as prescribed, payment of a registration fee, and application of the water to reasonable and beneficial use with due diligence. Existing law requires a person, in registering their water use to the board, to set forth a certification that the registrant has contacted the Department of Fish and Wildlife and to include a copy of any conditions required by the department.

This bill would authorize any person to also obtain a right to appropriate water for a small restoration use, as defined. The bill would also authorize a person to apply for a restoration management permit from the Department of Fish and Wildlife, as provided, and if the permit is issued, the person would be required to include a copy of any conditions required by the restoration management permit with the required certification.

Existing law exempts certain stream segments subject to certain minimum streamflow requirements from the provisions of the act upon proper registration.

This bill, if the Director of Fish and Wildlife establishes proposed streamflow requirements for a stream segment, as specified, would instead prohibit the authorization of a registration for that stream segment until the board establishes instream flow requirements as a part of the general conditions applicable to that stream segment. The bill would require that the establishment of those instream flow requirements be done after the board considers the proposed streamflow requirements, if proposed by the director.

~~Existing law, the Water Rights Permitting Reform Act of 1988, authorizes a person to obtain a right to appropriate water for a~~

~~small domestic use, small irrigation use, or livestock stockpond use upon first registering the use, as those uses are defined by the act, with the State Water Resources Control Board and thereafter applying the water to reasonable and beneficial use with due diligence. Existing law exempts certain stream segments subject to certain minimum streamflow requirements from the provisions of the act upon proper registration:~~

~~This bill would make a nonsubstantive change to the above-described exemption.~~

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

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

SECTION 1. *Section 1228.1 of the Water Code is amended to read:*

1228.1. (a) The Legislature finds and declares that it is in the public interest to provide a timely, efficient, and economic procedure for the acquisition of rights to appropriate water for a small domestic use, including incidental stock watering and irrigation uses, a small irrigation use, ~~and~~ *a small restoration use, and* for a livestock stockpond subject to prior rights.

(b) As used in this article:

(1) "Small domestic use" means a domestic use, as that use is defined by board rule, or a use for aesthetic, fire protection, recreational, or fish and wildlife purposes that is associated with a dwelling or other facility for human occupation, that does not exceed direct diversion of 4,500 gallons per day or diversion to storage of 10 acre-feet per year.

(2) "Small irrigation use" means either of the following:

(A) An irrigation use, heat control use, or frost protection use, not to exceed diversion to storage of 20 acre-feet per year, including impoundment for incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

(B) An irrigation use not to exceed direct diversion of 42,000 gallons per day, up to a maximum of 20 acre-feet per year.

(3) "Livestock stockpond" means a water impoundment structure constructed for livestock watering use not to exceed direct diversion of 4,500 gallons per day, or diversion to storage of 10 acre-feet per year, as that use is defined by the board, and including impoundment for incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

(4) "Small restoration use" means any of the following uses in connection with a project whose primary purpose is to restore, enhance, or provide habitat for fish and wildlife:

(A) A use for fish and wildlife preservation and enhancement not to exceed instream diversion or direct diversion of 42,000 gallons per day, up to a maximum of 20 acre-feet per year.

(B) A use for fish and wildlife preservation and enhancement not to exceed diversion to storage of 20 acre-feet per year, including impoundment for incidental fire protection, irrigation, recreational, or fish and wildlife purposes.

(C) A use not to exceed diversion to storage of 20 acre-feet per year, including, impoundment for incidental fire protection, irrigation, recreational, or fish and wildlife purposes, when the use meets all of the following:

(i) The water is diverted during times when the board determines that flows exceed what is reasonably necessary for prior rights and instream beneficial uses.

(ii) (I) The right to divert and use the water is provided in exchange for a binding commitment, approved by the board and made a condition of the registration, to reduce other diversions during times of deficient streamflow.

(II) A binding commitment to reduce other diversions may be accomplished by an instream flow dedication pursuant to Section 1707, a forbearance agreement, a condition or term of a permit or license, or other method approved by the board. The board shall give priority to processing restoration registrations that are coupled with a petition for mandatory dedication to instream beneficial uses or wetlands habitat pursuant to Section 1707.

(iii) The board determines that the environmental benefit of the reduced diversion exceeds any adverse impact of the diversion to storage.

SEC. 2. *Section 1228.3 of the Water Code is amended to read:*

1228.3. (a) Registration of water use pursuant to this article shall be made upon a form prescribed by the board. The registration form shall set forth all of the following:

(1) The name and post office address of the registrant.

(2) The source of water supply.

(3) The nature and amount of the proposed use.

(4) The proposed place of diversion.

(5) The place where it is intended to use the water.

(6) The time for completion of construction of diversion works and for complete application of the water to the proposed use.

(7) (A) A certification that the registrant has contacted a representative of the Department of Fish and Wildlife designated by that department for that purpose, has provided information to that department that is set forth in the registration form, and has agreed to comply with all lawful conditions, including, but not limited to, conditions upon the construction and operation of diversion works, required by the Department of Fish and Wildlife. The certification shall include a copy of any conditions required by the Department of Fish and Wildlife pursuant to this paragraph.

(B) A registrant for a small restoration use registration may apply for a restoration management permit issued by the Department of Fish and Wildlife pursuant to Chapter 6.7 (commencing with Section 1670) of Division 2 of the Fish and Game Code. If the Department of Fish and Wildlife issues a restoration management permit for the small restoration use, the registrant shall include a copy of any conditions required by the restoration management permit with the certification required in subparagraph (A).

(8) Any other information that may reasonably be required by the board.

(b) Registration of water use shall be deemed completed on the date that the form, executed in substantial compliance with the requirements of this section, and the registration fee specified in Section 1525 are received by the board.

(c) The board shall issue monthly a list of registrations filed under this article during the preceding calendar month. This list shall contain the information required by paragraphs (1) to (6), inclusive, of subdivision (a). The list shall set forth a date prior to which an interested person may file a written protest in opposition to the approval of a stockpond registration. That date shall be not later than 30 days from the date on which the list is issued. The board shall mail the monthly list of registrations filed to a person who requests the list.

(d) Prior to the date set forth on the list required under subdivision (c), an interested person may file with the board a written protest in opposition to the approval of a stockpond registration. The protest shall clearly set forth the protestant's objections to the registered use based on interference with prior rights. The protest shall be served on the registrant by the protestant by mailing a duplicate copy of the protest to the registrant, or through service undertaken in another manner determined to be adequate by the board. The procedures set forth in Article 1.5 (commencing with Section 1345) of Chapter 5 shall be used for reviewing a protested registration.

SEC. 3. Section 1228.5 of the Water Code is amended to read:

1228.5. (a) Registration of a small domestic, small irrigation, *small restoration*, or livestock stockpond use pursuant to this article shall be renewed prior to the expiration of each five-year period following completed registration.

(b) Renewal of registration shall be made upon a form prescribed by the board and shall contain a report of water use made pursuant to the registration as may be required by the board.

(c) The conditions established by the board pursuant to Section 1228.6 that are in effect at the time of renewal of registration shall supersede the conditions that were applicable to the original completed registration.

(d) Failure to renew registration in substantial compliance with the reporting requirements prescribed by the board within the time period specified in subdivision (a), or to pay the renewal fee specified in Section 1525, shall result by operation of law in the revocation of any right acquired pursuant to this article.

SEC. 4. Section 1229.1 of the Water Code is amended to read:

~~1229.1.(a) This article does not apply to those stream segments for which the Director of Fish and Wildlife establishes proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code, notwithstanding the July 1, 1989, deadline for preparation of the requirements.~~

1229.1. (a) If the Director of Fish and Wildlife establishes proposed streamflow requirements for a stream segment pursuant to Section 10002 of the Public Resources Code, regardless of whether those requirements were proposed before July 1, 1989, a

registration for that stream segment pursuant to this article is not authorized until the board establishes instream flow requirements as part of the general conditions applicable to that stream segment. The establishment of those instream flow requirements shall be done after the board considers the proposed streamflow requirements, if proposed by the Director of Fish and Wildlife.

(b) Notwithstanding subdivision (a), this article applies to a registration filed before the Director of Fish and Wildlife establishes proposed streamflow requirements for the source of water supply for the registration. The conditions for renewal under subdivision (c) of Section 1228.5 may include any conditions the Department of Fish and Wildlife determines to be necessary to protect stream-related fish and wildlife resources on a source of water supply for which the Director of Fish and Wildlife has established proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code.

~~SECTION 1. Section 1229.1 of the Water Code is amended to read:~~

~~1229.1. (a) This article does not apply to stream segments for which the Director of Fish and Wildlife establishes proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code, notwithstanding the July 1, 1989, deadline for preparation of the requirements.~~

~~(b) Notwithstanding subdivision (a), this article applies to a registration filed before the Director of Fish and Wildlife establishes proposed streamflow requirements for the source of water supply for the registration. The conditions for renewal under subdivision (c) of Section 1228.5 may include any conditions the Department of Fish and Wildlife determines to be necessary to protect stream-related fish and wildlife resources on a source of water supply for which the Director of Fish and Wildlife has established proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code.~~