

AB 2649 (Arambula) – Mock-up Amendments to June 18 text

SECTION 1.

~~Section 1242 of the Water Code is amended to read:~~

~~**1242.**~~

~~Consistent with the applicable permit or license, any diversion of water to underground storage, including the diversion of water for groundwater recharge, constitutes a diversion of water for beneficial use if the diverted water is put to beneficial use consistent with this division. The beneficial use of water diverted to underground storage is not limited to uses requiring subsequent extraction or release of the stored water and may include beneficial uses such as protection of water quality made while the water is in underground storage. The forfeiture periods in Sections 1240 and 1241 do not include any period when the water is being used in the aquifer or storage area or is being held in underground storage for later application to beneficial use.~~

SEC. 2.

Section 1348 of the Water Code is amended to read:

1348.

For purposes of this article, a minor application shall mean either of the following:

(a) Any application which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

(b) An application by a groundwater sustainability agency or local agency, as defined in Section 10721, for a diversion previously authorized by a temporary permit under Article 2 (commencing with Section 1433) of Chapter 6.5 ~~and that the Division of Water Rights has determined, in its discretion, that data available from a field investigation and operation under the temporary permit is sufficient to issue a decision.~~

(c) Nothing in this article precludes, or shall be interpreted to preclude, permitting of an appropriation for any authorized beneficial use, including beneficial use under Section 1242, under other provisions of this division.

SEC. 3.

The heading of Article 1 (commencing with Section 1425) is added to Chapter 6.5 of Part 2 of Division 2 of the Water Code, to read:

Article 1. Temporary Urgency Permits

SEC. 4.

Section 1425 of the Water Code is amended to read:

1425.

(a) Any person, whether or not an applicant, permittee, or licensee under provisions of this division other than this article, who has an urgent need to divert and use water may apply for, and the board may issue, a conditional, temporary permit without complying with other procedures or provisions of this division, but subject to all requirements of this article.

(b) Prior to issuing a permit pursuant to this article, the board shall make all of the following findings:

(1) The applicant has an urgent need for the water proposed to be diverted and used.

(2) The water may be diverted and used without injury to any lawful user of water.

(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The water may be diverted without unreasonably impacting water quality objectives or standards with the watershed or areas downstream of the watershed.

(5) The proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) "Urgent need," for the purposes of this article, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary diversion and use is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find an applicant's need to be urgent if the board in its judgment concludes, if applicable, that the applicant has not exercised due diligence either (1) in making application for a permit pursuant to provisions of this division other than this article, or (2) in pursuing that application to permit.

(d) The board may delegate to any officer ~~or employee~~ of the board or to the Division of Water Rights all or any of its functions under this article, ~~as provided in Section 7.~~

SEC. 5.

Section 1430 of the Water Code is amended to read:

1430.

A temporary permit issued under this article shall not result in the creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. The authorization to divert and use water under a temporary permit shall automatically expire 180 days after the authorization takes effect, unless an earlier date is specified or the temporary permit is revoked. The 180-day period does not include any time required for monitoring, reporting, or mitigation before or after the authorization to divert or use water under the temporary permit. If the temporary permit authorizes diversion to storage, the 180-day period is a limitation on the authorization to divert and not a limitation on the authorization for beneficial use of water diverted to storage.

SEC. 6.

Article 2 (commencing with Section 1433) is added to Chapter 6.5 of Part 2 of Division 2 of the Water Code, to read:

Article 2. Temporary Permits for Diversion to Underground Storage

1433.

Unless the context otherwise requires, the following govern the construction of this article:

~~(a) "Beneficial use" includes, but is not limited to, the following:~~

~~(1) Prevention of significant and unreasonable seawater intrusion.~~

~~(2) Prevention of significant and unreasonable degradation of water quality, including the migration of contaminant plumes that impair water supplies.~~

~~(3) Prevention of significant and unreasonable land subsidence that substantially interferes with surface land uses.~~

~~(4) Maintenance or enhancement of groundwater dependent ecosystems.~~

~~(5) Beneficial uses that require the extraction of stored water.~~

~~(ba)~~ "Local agency" has the same meaning as defined in Section 10721.

~~(eb)~~ "Groundwater sustainability agency" has the same meaning as defined in Section 10721.

1433.1.

(a) A groundwater sustainability agency or a local agency, whether or not an applicant, permittee, or licensee under provisions of this division other than this article, may apply for, and the board may issue, a conditional temporary permit for diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin under Part 2.74 (commencing with Section 10720) of Division 6, without complying with other procedures or provisions of this division, subject to all requirements of this article. An application may be filed under this article whether or not there is an adopted groundwater sustainability plan, an interim plan or an alternative under Section 10733.6 for the basin.

(b) Before issuing a permit pursuant to this article, the board shall make all of the following findings based upon a preponderance of the evidence:

(1) The proposed diversion is to underground storage for beneficial use ~~that advances the sustainability goal of a groundwater basin.~~

(2) The water may be diverted and used without injury to any lawful user of water. This finding may be satisfied by demonstrating both of the following:

(A) The proposed diversion to underground storage will occur only:

~~(i) w~~When flows in the source waterbody exceed the claims of all ~~known~~existing legal users who divert water downstream of the proposed point of diversion and are identified in the board's eWRIMS database or a successor water-right database; or

~~(ii) During the highest ten percent of flows observed at the proposed point or points of diversion.~~

(B) To prevent injury to existing legal users of water, ~~S~~storage and extraction from storage in the basin under the proposed permit will be subject to accounting methods and reporting requirements established by either:

(i) a ~~A~~ groundwater sustainability plan, interim plan, or alternative approved pursuant to Section 10733.6;

(ii) that ~~t~~The board, in applying conditions to the permit finds adequate to prevent injury to any lawful user of water.

(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other existing or later identified instream beneficial uses identified by the board or a regional board in a water quality control plan or other existing regulatory document and will not impact the ability to meet applicable water quality objectives.

(4) The proposed diversion and use are in the public interest, including findings to support permit conditions, consistent with Section 1257 ~~imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.~~

(c) The board may delegate to any officer ~~or employee~~ of the board or to the Division of Water Rights all or any of its functions under this article, ~~as provided in Section 7.~~

(d) Nothing in this article precludes, or shall be interpreted to preclude, permitting of an appropriation for any authorized beneficial use, including beneficial use under Section 1242, under other provisions of this division.

1433.2.

(a) The application for a temporary permit shall be completed in accordance with Section 1260 and shall be accompanied by any maps, drawings, and other data that may be required by the board's regulations.

(b) An applicant shall pay an application fee and, if a permit is issued, a permit fee, both in amounts calculated in accordance with the provisions of Chapter 8 (commencing with Section 1525). The board shall set reduced application and permit fees for applications and temporary permits issued under this article.

(c) In addition to subdivisions (a) and (b), an application shall include all of the following:

(1) Evidence that the applicant has completed ~~initiated~~ any environmental review required by, or the project is exempt from, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The board may not issue a permit under this article until any environmental document required by the California Environmental Quality Act has been adopted or certified.

(2) A certification that the applicant initiated ~~has consulted~~ with the Department of Fish and Wildlife at least 30 days before submission of the application. The certification shall include a copy of any conditions proposed by the Department of Fish and Wildlife.

(3) (A) Except as provided in subparagraph (B), a ~~complete~~ water availability analysis including applicable water quality objectives that quantifies, under a range of foreseeable

hydrologic conditions, the amount of unappropriated water available considering existing instream beneficial uses identified in a water quality control plan or other existing regulatory document and all ~~existing known~~ legal users who divert water hydrologically connected to the proposed point of diversion and are identified in the board's eWRIMS database or successor database.

(B) If the applicant proposes to divert water only when flows in the source waterbody are in the highest ten percent of flows observed at the proposed point or points of diversion, the applicant shall provide a statistical analysis of data from the nearest streamflow gage with at least ten years of streamflow measurements to demonstrate that its diversions would occur only in conditions subject to this subdivision (c)(3)(B)~~exceed an established or calculated flood stage, a simplified water availability analysis.~~

(4) A proposed accounting method for storage and extraction of water diverted under the permit that is either:

(A) e~~C~~ertified to be consistent with the groundwater sustainability plan or alternative approved pursuant to Section 10733.6 by the groundwater sustainability agency or local agency for the basin where the water is proposed to be stored; or

(B) If there is no applicable groundwater sustainability plan or alternative approved pursuant to Section 10733.6, certified by the applicant to demonstrate beneficial use of water under the proposed permit and not inconsistent with the department's standards in Section 356.2 of the California Code of Regulations.

1433.3.

(a) As soon as practicable after the receipt of an application, the board shall issue and deliver to the applicant a notice of the application that includes the information required by Section 1301 and a list of persons who, in the judgment of the board, could be adversely affected by the temporary diversion and use. The board shall post the notice to its Internet Web site within 10 days of issuing the notice to the applicant.

(b) The applicant shall provide notice by registered or electronic mail to each person on the list of interested persons provided by the board and the list of interested persons maintained by any groundwater sustainability agency or local agency for the basin where the water is proposed to be stored. The applicant shall provide proof of notice to the board.

(c) Any interested person may file an objection to the temporary diversion and use with the board within 30 days of the mailing of the notice by the applicant. A person filing an objection shall send a copy to the applicant.

(d) The board shall consider an objection, and may hold a hearing on the objection after notice to all interested persons, before acting upon an application for a permit.

1433.4.

The board shall supervise diversion and use of water under a permit issued under this article ~~for the protection of all lawful users of water and instream beneficial uses and~~ for compliance with permit conditions. The permit may require a person who extracts water stored under the permit to comply with regulatory and permitting requirements for

groundwater extraction set by the groundwater sustainability plan or alternative approved pursuant to Section 10733.6 for the basin.

1433.5.

A permit issued under this article shall not result in the creation of a vested right, even of a temporary nature. The permit is subject, at all times, to modification or revocation at the discretion of the board after the permittee has an adequate opportunity to be heard concerning any proposed modifications or revocation. The authorization to divert and use water under the permit shall automatically expire five years after the authorization takes effect, unless an earlier date is specified or the temporary permit is revoked, ~~and shall be junior in priority to any subsequent appropriation not subject to this chapter~~. The five-year period does not include any time required for monitoring, reporting, or mitigation before or after the authorization to divert or use water under the permit. The five-year period is a limitation on the authorization to divert and not a limitation on the authorization for beneficial use of the water diverted to underground storage.

1433.6.

The board may renew a permit issued under this article ~~if the board, in its judgment, concludes that the applicant has exercised due diligence in applying for a permit pursuant to provisions of this division, other than this chapter, and in pursuing that application once it is filed~~. The board shall process a request for a renewal of a permit issued under this article pursuant to this article, except that the board shall not require the permittee to file duplicate maps, drawings, or other data if they were furnished with the original application for the permit. Each renewal of a permit issued under this article shall be valid for a period not to exceed five years from the date of renewal.

SEC. 7.

The heading of Chapter 6.6 (commencing with Section 1435) of Part 2 of Division 2 of the Water Code is amended to read:

CHAPTER 6.6. Temporary Changes

SEC. 8.

The heading of Article 1 (commencing with Section 1435) is added to Chapter 6.6 of Part 2 of Division 2 of the Water Code, to read:

Article 1. Temporary Urgency Changes

SEC. 9.

Section 1435 of the Water Code is amended to read:

1435.

(a) Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for, and the board may issue, a conditional, temporary change order without complying with other procedures or provisions of this division, but subject to all requirements of this article.

(b) Prior to issuing a change order pursuant to this article, the board shall make all of the following findings:

(1) The permittee or licensee has an urgent need to make the proposed change.

(2) The proposed change may be made without injury to any other lawful user of water.

(3) The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) "Urgent need," for the purposes of this article, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find a petitioner's need to be urgent if the board in its judgment concludes, if applicable, that the petitioner has not exercised due diligence either (1) in petitioning for a change pursuant to provisions of this division other than this article, or (2) in pursuing that petition for change.

(d) The board may delegate to any officer ~~or employee~~ of the board or to the Division of Water Rights all or any of its functions under this article, ~~as provided in Section 7.~~

SEC. 10.

Section 1440 of the Water Code is amended to read:

1440.

A temporary change order issued under this article shall not result in the creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. The authorization to divert and use water under a temporary change order shall automatically expire 180 days after the authorization takes effect, unless an earlier date is specified or the temporary change order is revoked. The 180-day period does not include any time required for monitoring, reporting, or mitigation before or after the authorization to divert or use water under the temporary change order. If the temporary change order authorizes diversion to storage, the 180-day period is a limitation on the authorization to divert and not a limitation on the authorization for beneficial use of water diverted to storage.

SEC. 11.

Section 1441 of the Water Code is amended to read:

1441.

A temporary change order issued under this article may be renewed by the board. Requests for renewal shall be processed in the manner provided by this chapter except that the permittee or licensee shall not be required to file duplicate maps, drawings, or other data if they were furnished with the original petition. Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal.

SEC. 12.

Section 1442 of the Water Code is amended to read:

1442.

This article shall not apply to any permittee or licensee petitioning for a temporary change pursuant to Chapter 10.5 (commencing with Section 1725).

SEC. 13.

Article 2 (commencing with Section 1443) is added to Chapter 6.6 of Part 2 of Division 2 of the Water Code, to read:

Article 2. Temporary Changes for Diversion to Underground Storage

1443.

Unless the context otherwise requires, the following govern the construction of this article:

~~(a) "Beneficial use" includes, but is not limited to, the following:~~

~~(1) Prevention of significant and unreasonable seawater intrusion.~~

~~(2) Prevention of significant and unreasonable degradation of water quality, including the migration of contaminant plumes that impair water supplies.~~

~~(3) Prevention of significant and unreasonable land subsidence that substantially interferes with surface land uses.~~

~~(4) Maintenance or enhancement of groundwater dependent ecosystems.~~

~~(5) Beneficial uses that require the extraction of stored water.~~

~~(b)~~ "Local agency" has the same meaning as defined in Section 10721.

~~(c)~~ "Groundwater sustainability agency" has the same meaning as defined in Section 10721.

1443.1.

(a) A groundwater sustainability agency, or a local agency, that is a permittee or a licensee under provisions of this division other than this article, may petition for, and the board may issue, a conditional temporary change order that authorizes the diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin under Part 2.74 (commencing with Section 10720) of Division 6, without complying with other procedures or provisions of this division, subject to all requirements of this article.

(b) Before issuing a change order pursuant to this article, the board shall make all of the following findings based upon a preponderance of the evidence:

(1) The proposed change is for diversion to underground storage for beneficial use ~~that advances the sustainability goal of a groundwater basin.~~

(2) The proposed change may be made without injury to any other lawful user of water ~~consistent with Section 1702, including groundwater users in the applicable basin. This finding may be satisfied by demonstrating both of the following:~~

~~(A) The proposed change may be made without injury to any other lawful user of water consistent with Section 1702, including groundwater users in the applicable basin, without~~

changing the permit's or license's authorized season of diversion, and without expanding the amount of water otherwise available to the permit or license at its priority date.

~~(A) The proposed diversion to underground storage will occur only when flows in the source waterbody exceed the claims of all known legal users who divert water downstream of the proposed point of diversion.~~

~~(B) The board shall make a finding that the proposed change would not injure legal users of groundwater in the applicable basin if the petitioner demonstrates that \$storage and extraction from storage in the basin under the proposed change will be subject to either:~~

~~(iA) a~~ Accounting methods and reporting requirements established by a groundwater sustainability plan, interim plan, or alternative approved pursuant to Section 10733.6; or
~~(B)~~

~~(iiB) Accounting methods and reporting requirements~~ that the board finds adequate to prevent injury to any lawful user of water if there is no groundwater sustainability plan, interim plan, or alternative approved pursuant to Section 10733.6 for the applicable basin.

~~(3) The proposed change may be made without unreasonable effect upon fish, wildlife, or other existing or later identified instream beneficial uses identified by the board or a regional board in a water quality control plan or other existing regulatory document.~~

The proposed change:

(A) may be made without unreasonable effect upon fish, wildlife, or other existing or later identified instream beneficial uses identified by the board or a regional board in a water quality control plan or existing regulatory document; and

(B) As applicable according to the permit's or license's priority date, will not impact the ability to meet applicable water quality objectives.

~~(4) The proposed change is in the public interest, including findings to support any necessary change order conditions ~~imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.~~~~

~~(c) The board may delegate to any officer ~~or employee~~ of the board or to the Division of Water Rights all or any of its functions under this article, ~~as provided in Section 7.~~~~

1443.2.

(a) The petition for a temporary change order shall be completed in accordance with the rules of the board that specify the information and maps to be included in a petition for change.

(b) A petitioner for a change order shall pay a fee calculated in accordance with the provisions of Chapter 8 (commencing with Section 1525).

(c) In addition to subdivisions (a) and (b), a petition shall include all of the following:

(1) Evidence that the petitioner has ~~initiated~~completed any environmental review required by, or the project is exempt from, the California Environmental Quality Act (Division 13

(commencing with Section 21000) of the Public Resources Code). The board may not issue a change order under this article until any environmental document required by the California Environmental Quality Act has been adopted or certified.

(2) A certification that the petitioner has initiated consultation with the Department of Fish and Wildlife at least 30 days before submission of the petition. The certification shall include a copy of any conditions proposed by the Department of Fish and Wildlife.

~~(3) (A) Except as provided in subparagraph (B), a complete water availability analysis that quantifies, under a range of foreseeable hydrologic conditions, the amount of unappropriated water available considering instream beneficial uses and all known legal users who divert water hydrologically connected to the proposed point of diversion.~~

~~(B) If the petitioner proposes to divert water only when flows in the source waterbody exceed an established or calculated flood stage, a simplified water availability analysis.~~

(34) A proposed accounting method for storage and extraction of water diverted under the change order that is either:

(A) Certified to be consistent with the groundwater sustainability plan or alternative approved pursuant to Section 10733.6 by the groundwater sustainability agency or local agency for the basin where the water is proposed to be stored; or

(B) If there is no applicable groundwater sustainability plan or alternative approved pursuant to Section 10733.6, certified by the petitioner to demonstrate beneficial use of water under the proposed change order and not inconsistent with the department's standards in Section 356.2 of the California Code of Regulations.

1443.3.

(a) As soon as practicable after the receipt of a petition for a temporary change order, the board shall issue and deliver to the petitioner a notice of the petition and a list of persons who, in the judgment of the board, could be adversely affected by the temporary change. The board shall post the notice to its Internet Web site within 10 days of issuing the notice to the petitioner.

(b) The petitioner shall provide notice by registered or electronic mail to each person on the list of interested persons provided by the board and the list of interested persons maintained by any groundwater sustainability agency or local agency for the basin where the water is proposed to be stored. The petitioner shall provide proof of notice to the board.

(c) Any interested person may file an objection to the temporary diversion and use with the board within 30 days of the mailing of the notice by the petitioner. A person filing an objection shall send a copy to the applicant.

(d) The board shall consider an objection, and may hold a hearing on the objection after notice to all interested persons, before acting upon a petition for a temporary change order.

1443.4.

The board shall supervise diversion and use of water under a change order issued under this article ~~for the protection of all lawful users of water and instream beneficial uses and~~ for compliance with change order conditions. The change order may require a person who extracts water stored under the change order to comply with regulatory and permitting requirements for groundwater extraction set by the groundwater sustainability plan or alternative approved pursuant to Section 10733.6 for the basin.

1443.5.

A change order issued under this article shall not result in the creation of a vested right, even of a temporary nature. The change order is subject, at all times, to modification or revocation at the discretion of the board, after the permittee or licensee has an adequate opportunity to be heard concerning any proposed modifications or revocation. The authorization to divert and use water under the change order shall automatically expire five years after the authorization takes effect, unless an earlier date is specified or the temporary change order is revoked, ~~and shall be junior in priority to any subsequent appropriation not subject to this chapter.~~ The five-year period does not include any time required for monitoring, reporting, or mitigation before or after the authorization to divert or use water under the change order. The five-year period is a limitation on the authorization to divert and not a limitation on the authorization for beneficial use of the water diverted to underground storage.

1443.6.

The board may renew a change order issued under this article ~~if the board, in its judgment, concludes that the petitioner has exercised due diligence in applying for a change pursuant to provisions of this division, other than this chapter, and in pursuing that petition once it is filed.~~ The board shall process a request for a renewal of a change order issued under this article pursuant to this article. The board may request the petitioner to file maps, drawings, or other data furnished with the original petition for the change order. Each renewal of a change order issued under this article shall be valid for a period not to exceed five years from the date of renewal.

1443.7.

This article does not apply to any permittee or licensee petitioning for a temporary change pursuant to Chapter 10.5 (commencing with Section 1725). Nothing in this article precludes, or shall be interpreted to preclude, changes to permits or licenses to support any authorized beneficial use, including beneficial use under Section 1242, from being made under other provisions of this division.

SEC. 14.

Section 1704.4 of the Water Code is amended to read:

1704.4.

For purposes of this chapter, a minor petition for change means either of the following:

(a) Any petition which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

(b) A petition for change by a groundwater sustainability agency or local agency, as defined in Section 10721, for a change previously authorized by a temporary change under Article

2 (commencing with Section 1443) of Chapter 6.6 ~~and that the Division of Water Rights has determined, in its discretion, that data available from a field investigation and operation under the temporary change is sufficient to issue a decision. Nothing in this section precludes, or shall be interpreted to preclude, changes to permits or licenses to support any authorized beneficial use, including beneficial use under Section 1242, from being made under other provisions of this division.~~